

SUPREME COURT OF RHODE ISLAND

State v. Kevin Storey

102 A.3d 641 (R.I. 2014) · No. 2012-327-C.A. (P2/09-3811A) · Decided November 24, 2014

SUMMARY

The Rhode Island Supreme Court affirmed Kevin Storey's convictions for assault with a dangerous weapon and simple assault and battery. The court rejected challenges to the denial of his motions for judgment of acquittal and a new trial, the limitation of cross-examination concerning custody issues, and the legality of his sentence. The court held that the evidence supported treating the use of hands in choking the victim as assault with a dangerous weapon and declined to review the sentence on direct appeal.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Chief Justice Paul A. Suttell; Paul A. Suttell, C.J.; Maureen McKenna Goldberg, J.; Francis X. Flaherty, J.; William P. Robinson III, J.; Gilbert V. Indeglia, J.
JURISDICTION	Rhode Island
DECIDED	November 24, 2014
DOCKET	2012-327-C.A. (P2/09-3811A)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a Superior Court judgment after a jury convicted him of assault with a dangerous weapon and simple assault and battery. The Supreme Court considered the appeal under a show-cause order and decided it summarily without further briefing or oral argument.
STANDARD OF REVIEW	The Supreme Court first reviews the denial of a Rule 33 motion for a new trial when both Rule 29 and Rule 33 motions are presented. Review of the denial of a new-trial motion is deferential; the trial justice's decision receives great weight and will not be overturned absent overlooked or misconceived material evidence or clear error. A Rule 29 motion is reviewed under the light most favorable to the state, without assessing credibility or weighing the evidence. Limitation of cross-examination is reviewed for clear abuse of discretion resulting in prejudicial error. The legality or validity of a sentence generally is not

	reviewed on direct appeal absent extraordinary circumstances and must first be challenged under Rule 35.
PRECEDENTIAL VALUE	Published Rhode Island Supreme Court opinion; precedential.
PARTIES	Kevin Storey v. State of Rhode Island

TOPICS

criminal procedure evidence appellate procedure standard of review sentencing

PRACTICE AREAS

criminal law criminal procedure evidence appellate procedure sentencing

QUESTIONS PRESENTED

1. Whether the trial justice properly denied Storey's motion for a new trial and motion for judgment of acquittal where the evidence supported the finding that he used his hands as a dangerous weapon.
2. Whether the trial justice improperly limited Storey's cross-examination of Saleeba concerning prior custody issues involving her two older sons.
3. Whether the Supreme Court could review the legality of Storey's sentence on direct appeal.

HOLDINGS

1. The trial justice properly denied the motion for a new trial because she independently assessed the evidence and witness credibility, agreed with the jury's verdict, and did not overlook or misconceive material evidence or act clearly wrong.
2. Hands may constitute a dangerous weapon when used in a manner likely to produce substantial bodily harm; the relevant inquiry is whether serious bodily injury may have resulted, not whether it actually resulted.
3. The trial justice did not abuse her discretion by excluding cross-examination concerning Saleeba's prior custody issues because the subject was irrelevant to the charges.
4. The sentence claim was not properly before the Supreme Court because challenges to the validity or legality of a sentence must ordinarily begin in the Superior Court under Rule 35, and Storey showed no extraordinary circumstances.

KEY QUOTATIONS

"When faced, as here, with both Rule 29 and [Super. R. Crim. P.] 33 motions, 'this Court first conducts a review of the new-trial motion.'" (at -6-)

"This Court has never stated that any specific duration or intensity is necessary for choking with a person's hands to constitute assault with a dangerous weapon." (at -9-)

“The ability of a defendant to meaningfully cross-examine the state’s witnesses is ‘an essential element’ of the due process guarantees of the United States and Rhode Island constitutions.” (at -10-)

FACTUAL BACKGROUND

Danielle Saleeba testified that Storey, then her husband, attacked her in their bedroom by striking her, choking her with both hands, and putting his fingers down her throat. She sustained a deep laceration to her temple requiring approximately twenty-four stitches and initially told hospital personnel that she had hit her head on a computer desk because she feared Storey. Several days later she disclosed the attack to her mother and reported it to police. The evidence also included testimony about Storey's jealousy concerning Saleeba's coworker and threats Storey allegedly made during the drive to the hospital.

PROCEDURAL HISTORY

A Providence County Superior Court jury convicted Storey of assault with a dangerous weapon and acquitted him of assault and battery resulting in serious bodily injury while convicting him of the lesser-included offense of simple assault and battery. The trial justice denied his Rule 29 motion for judgment of acquittal and Rule 33 motion for a new trial, then imposed concurrent sentences, including fifteen years on the dangerous-weapon assault count, with five years to serve and ten years suspended with probation. The Rhode Island Supreme Court affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The record shall be returned to the Superior Court.

CASES CITED

- State v. Fleck, 81 A.3d 1129, 1133 (R.I. 2014)
- State v. Gaffney, 63 A.3d 888, 893 (R.I. 2013)
- State v. Pineda, 13 A.3d 623, 640 (R.I. 2011)
- State v. Watkins, 92 A.3d 172, 191 (R.I. 2014)
- State v. Clay, 79 A.3d 832, 841-42 (R.I. 2013)
- State v. Adewumi, 966 A.2d 1217, 1224 (R.I. 2009)
- State v. Zangrilli, 440 A.2d 710, 711-12 (R.I. 1982)
- State v. Lopez, 78 A.3d 773, 777, 781 (R.I. 2013)
- State v. Gore, 820 A.2d 978, 980 (R.I. 2003) (mem.)
- State v. Lomba, 37 A.3d 615, 621 (R.I. 2012)
- State v. Doctor, 690 A.2d 321, 327 (R.I. 1997)
- State v. Wright, 817 A.2d 600, 610 (R.I. 2003)

- State v. Ibrahim, 862 A.2d 787, 793-94 (R.I. 2004)
- State v. Bettencourt, 723 A.2d 1101, 1114 (R.I. 1999)

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