

CRIMINAL CASE SUMMARIES
RHODE ISLAND SUPREME COURT

2017 – 2018

2016-2017 case decided after last year's Annual Meeting

State v. Boghos Terzian, 162 A.3d 1230 (R.I. 2017)

The defendant, Boghos Terzian (the defendant), appeals from judgments of conviction entered in the Superior Court following a jury trial. The defendant was convicted on three counts of felony assault with a dangerous weapon and one count of carrying a pistol without a license. Before the Supreme Court, the defendant contended that the Superior Court justice erred in denying his motion to suppress evidence seized by police during a warrantless entry and search of his home.

The state asserted that consent and exigent circumstances justified the officers' warrantless entry and search of the defendant's home. The Supreme Court rejected the state's argument and held that the warrantless search was in violation of the defendant's Fourth Amendment rights. Additionally, the Supreme Court held that the admission of the firearm did not amount to harmless error. Accordingly, the Supreme Court vacated the judgment of the Superior Court and remanded the case for a new trial.

2017-2018 cases

State v. Eugene Danis, 182 A.3d 36 (R.I. 2018)

After a jury trial in Kent County Superior Court, the defendant, Eugene Danis, was convicted of first-degree child molestation sexual assault and the sale or distribution of photographs of a minor suggesting that the minor engaged in, or is about to engage in, a sexual act. On appeal, the defendant argued that the trial justice deprived him of his Sixth Amendment constitutional rights to confront and cross-examine the complaining witness regarding prior sexual-abuse allegations against her biological father.

The Supreme Court held that the trial justice did not abuse his discretion in precluding the line of questioning regarding whether the complaining witness had a motive to lie about the allegations made against the defendant, based upon the lack of reliable testimony during a voir dire hearing. Further, the Court determined that the issue was waived because defense counsel failed to attempt this line of questioning before the jury after the trial justice's ruling on the motion *in limine*. As such, the Court affirmed the Superior Court's judgment.

State v. Frederick Gibson, No. 2015-108-M.P.,
Frederick Gibson v. State of Rhode Island, No. 2016-149-Appeal., No. 2017-317-M.P.

In these cases, the Supreme Court addressed two issues: (1) whether the duration of Frederick Gibson's duty to register as a sex offender under G.L. 1956 § 11-37.1-18 was a lifetime or ten years; and (2) whether Gibson's convictions for failing to comply with the notification provision of the registration statute in 2007, 2009, and 2010 violated the *ex post facto* clause by virtue of two amendments to § 11-37.1-4(a) extending the duration of his duty to register and increasing the punishment for the failure to notify. Those issues were addressed in the context of two cases: Gibson's petition for certiorari seeking review of a Superior Court magistrate's decision denying Gibson's motion to dismiss a 2012 charge for failing to notify under §§ 11-37.1-9 and 11-37.1-10; and Gibson's appeal from a judgment of the Superior Court denying his application for postconviction relief from his three previous failure-to-notify convictions.

With respect to the first issue, the Supreme Court held that Gibson's duty to register was limited to ten years, pursuant to the plain language of §§ 11-37.1-18 and 11-37.1-4(a). With respect to whether Gibson's 2007, 2009, and 2010 failure-to-notify convictions violated the *ex post facto* clause, the Supreme Court first concluded that the *ex post facto* clause was not implicated by the General Assembly's extension of Gibson's duty to register by the two amendments to § 11-37.1-4(a) because they were in furtherance of a civil, nonpunitive regulatory regime and not an example of retroactive punishment. Moreover, the Supreme Court also held that the increases in the punishment for failing to register or notify—from a misdemeanor in 1992, to a felony punishable by up to two years imprisonment in 1996, and to a felony punishable by up to ten years imprisonment in 2003—did not run afoul of the *ex post facto*

clause because Gibson's 2007, 2009, and 2010 failure-to-notify convictions were all well after the 2003 increase in punishment.

Accordingly, the Supreme Court affirmed in part and quashed in part the decision of the magistrate denying Gibson's motion to dismiss. The Court affirmed that part of the decision denying the motion to dismiss, but reversed the magistrate's ruling that Gibson had a lifetime duty to register. With respect to Gibson's application for postconviction relief, the Supreme Court affirmed the judgment denying relief, but reversed the hearing justice's ruling that the duration of Gibson's duty to register was a lifetime.

Leonard Jefferson v. State of Rhode Island, No. 2015-323-Appeal.

The petitioner, Leonard Jefferson, appealed from the June 2, 2015 denial of his application for postconviction relief in Providence County Superior Court. He contended before the Supreme Court that the hearing justice erred in denying his application for postconviction relief because, in his view, his parole was revoked and he was denied the possibility of parole in the future pursuant to G.L. 1956 § 13-8-14(b) in violation of the *ex post facto* clause of the United States Constitution. He further averred that the separation of powers doctrine and his right to be free from double jeopardy were also violated when he was denied the possibility of parole; and he argued that his due process rights were violated when his parole was revoked.

The Supreme Court held that Mr. Jefferson was entitled to a new parole revocation hearing with the representation of counsel prior to the revocation of his parole and that he did not receive such a hearing in the instant case. Accordingly, the Court remanded the case to the Superior Court with instructions that it remand the case to the Parole Board to conduct a new parole revocation hearing which complies with the requirements of due process and the right to counsel.

In re Joseph C., 178 A.3d 288 (R.I. 2018)

The juvenile respondent, Joseph C., appealed from a May 22, 2015 judgment of the Family Court finding him delinquent for having committed first-degree robbery and conspiracy to commit robbery. He contended that the state failed to submit sufficient independent evidence establishing the *corpus delicti* of the crimes charged and that, as a result, his confession should not have been considered by the trial justice.

The Supreme Court found that the state had produced sufficient evidence, independent of respondent's confession, to establish the *corpus delicti* of the crimes charged. The Court also held that the trial justice did not misconceive or overlook material evidence in adjudicating the respondent delinquent on both charges and, accordingly, the trial justice did not err in relying on respondent's confession in reaching her decision and in adjudicating him delinquent.

Accordingly, the Court affirmed the judgment of the Family Court.

State v. Andre Marizan, No. 2015-322-C.A.

The defendant, Andre Marizan, was convicted of first-degree sexual assault in a Providence County Superior Court jury trial. On appeal, the defendant argued that the prosecutor in her closing argument improperly commented on the defendant's failure to testify, violating his Fifth Amendment rights. In addition, the defendant contended that the trial justice erred in admitting the defendant's booking photograph into evidence and also erred in denying his motion for new trial.

The Supreme Court held that the prosecutor's comment in her closing argument was not of such a nature that a jury would interpret it as a remark on the defendant's failure to testify at trial, and, accordingly, the trial justice did not clearly err in denying the defendant's motion for a mistrial. Additionally, the Court concluded that the admission of the defendant's "mug shot" was not reversible error, if error at all, because of other evidence of guilt admitted at trial, as well as a timely cautionary instruction given by the trial justice. Finally, the Court held that the trial justice did not err in denying the defendant's motion for new trial because the trial justice adequately articulated his reasons for denying the motion, and he sufficiently assessed the credibility of all the witnesses. As such, the Court affirmed the Superior Court's judgment.

State v. Benjamin D. Minior, 175 A.3d 1202 (R.I. 2018)

The defendant, Benjamin D. Minior, appeals a Superior Court justice's denial of his motion to dismiss based on collateral estoppel. Before a Superior Court magistrate, the defendant sought to dismiss his criminal charges stemming from a motor vehicle accident, arguing that a Rhode Island Traffic Tribunal magistrate had already determined that he was not operating the vehicle and thus collateral estoppel precluded the issue from being relitigated. The Superior Court magistrate granted the motion to dismiss, and the state appealed his decision pursuant to G.L. 1956 § 8-2-11.1(d) to a Superior Court justice, who then reversed the dismissal. On appeal, the defendant argued that the trial justice erred in denying his motion to dismiss based on collateral estoppel.

On appeal, the Court held that collateral estoppel did not apply. The Court assumed, without deciding, that the elements of collateral estoppel were met. Nevertheless, basing its decision on the principle that collateral estoppel is not a mandatory doctrine, the Court concluded that it would be inequitable to apply collateral estoppel to Traffic Tribunal proceedings, based largely on their informal nature. Accordingly, the Court affirmed the Superior Court justice's decision.

Justice Robinson did not participate.

State of Rhode Island v. Jesse S. Perry, 132 A.3d 661 (R.I. 2018)

The defendant, Jesse Perry, appealed a judgment of conviction on two counts of first-degree child molestation and one count of second-degree child molestation following a jury-waived trial in the Superior Court. On appeal, he challenged the trial justice's decision that allowed the state to introduce testimony about the defendant's prior sexual misconduct. He maintained that the evidence did not satisfy the requirements of nonremoteness and similarity pursuant to Rule 404(b) of the Rhode Island Rules of Evidence. The defendant further asserted that the evidence should not have been admitted under Rule 403 of the Rhode Island Rules of Evidence because its probative value was outweighed by its risk of prejudice. The defendant also argued that the trial justice's decision on his motion to dismiss pursuant to Rule 29(b) of the Superior Court Rules of Criminal Procedure amounted to a mid-trial conclusive determination.

The Supreme Court held that the trial justice did not abuse her discretion in admitting the testimony about the defendant's prior sexual misconduct because the evidence satisfied the requirements of Rules 404(b) and 403 of the Rhode Island Rules of Evidence. It further concluded that, in rendering her decision on the defendant's motion to dismiss, the trial justice did not overlook or misconceive relevant and material evidence or was not otherwise clearly wrong. Accordingly, the Supreme Court affirmed the judgment of the Superior Court.

State v. Luke P. Peters, 172 A.3d 156 (R.I. 2017)

On August 7, 2014, while intoxicated, the defendant, Luke P. Peters (defendant), was a rear-seat passenger of a moving motor vehicle when he suddenly leaped forward, grabbed the steering wheel, and violently turned it, causing the vehicle to veer off the road and an accident to ensue. The defendant was charged with assault with a dangerous weapon in violation of G.L. 1956 § 11-5-2 (count 1); driving under the influence of liquor resulting in serious bodily injury in violation of G.L. 1956 § 31-27-2.6 (count 2); driving so as to endanger resulting in serious bodily injury in violation of § 31-27-1.2 (count 3); driving as to endanger resulting in nonserious bodily injury in violation of § 31-27-1.2 (count 4); contributing to the delinquency of a minor in violation of G.L. 1956 § 11-9-4 (count 5); and driving with a revoked license in violation of G.L. 1956 § 31-11-18 (count 6). The defendant filed a motion to dismiss pursuant to Rule 9.1 of the Superior Court Rules of Criminal Procedure. The trial justice granted defendant's motion holding that there was a lack of probable cause to charge defendant as an "operator" or "driver" of a motor vehicle. The state appealed, asserting that the trial justice erred when he determined that defendant was not operating or driving the motor vehicle.

This appeal solely rested on the precise question of whether the terms "operating" or "driving," under §§ 31-27-1.2, 31-27-2.6 and 31-11-18, can encompass a passenger in a moving motor vehicle who suddenly seizes the wheel from the driver and steers the vehicle. The Supreme Court held that G.L. 1956 § 31-1-17 (c) provides for *two* types of operators: drivers and those persons who are in actual physical control of a vehicle. The Supreme Court concluded that the defendant's actions placed him in the realm of being an "operator" of a moving vehicle under chapter 27 of title 31. Accordingly, the Supreme Court vacated the judgment of the Superior Court.

State v. John Rainey, 175 A.3d 1169 (R.I. 2018)

The defendant, John Rainey, appeals his conviction of two counts of first-degree child molestation and one count of second-degree child molestation. The defendant primarily argued that the trial justice erred in allowing, under Rule 404(b) of the Rhode Island Rules of Evidence, testimony from the defendant's biological daughter as to an unconvicted assault he allegedly committed against her. Moreover, the defendant argued that, even if the evidence was admissible under Rule 404(b), it was inadmissible under Rule 403 of the Rhode Island Rules of Evidence. In addition, the defendant asserted that the state's late disclosure of the Rule 404(b) witness's testimony constituted a violation of Rule 16 of the Superior Court Rules of Criminal Procedure and that the trial justice's remedy of delaying the witness's testimony for three days so that defense counsel could prepare for it constituted an abuse of discretion. Lastly, the defendant alleged the trial justice erred in denying both his motion for new trial and motion for judgment of acquittal.

The Court held that the trial justice did not abuse his discretion in allowing the Rule 404(b) testimony, nor did he do so in determining that the evidence was permissible under Rule 403. The Court similarly held that, while the state did violate Rule 16 in its late disclosure of the Rule 404(b) witness's testimony, the trial justice's remedy of requiring the state to wait three days before calling the witness was not an abuse of discretion. Finally, the Court upheld the trial justice's decision denying the defendant's motion for new trial and motion for judgment of acquittal.

Accordingly, the Court affirmed the Superior Court's judgment.