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State v. Johnson, 199 A.3d 1046 (R.I. 2019)

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Criminal Law. *State v. Johnson*, 199 A.3d 1046 (R.I. 2019). The Rhode Island Supreme Court will defer to the trial justice’s discretion where the defendant appeals the denial of his motion for a new trial because he claims the conviction was against the weight of the evidence. If the trial justice provides an explanation and support for his denial of the motion and does not overlook or misconceive any material evidence, the Court will uphold that decision.

FACTS AND TRAVEL

Defendant Jody Johnson (Defendant) was convicted of first-degree robbery, conspiracy to commit first-degree robbery, and assault with a dangerous weapon in a dwelling house with intent to commit robbery.¹ Defendant petitioned the Rhode Island Supreme Court (the Court) for a writ of certiorari requesting direct review of his convictions.²

The Defendant was identified by Mary Celletti (Celletti) as the man who robbed her home on January 28, 2014.³ At trial, Celletti testified that on the night of the incident, she was home alone preparing to watch the “presidential address” when she heard either a knock at the door or the ring of the doorbell.⁴ When Celletti asked who was at the door, an unfamiliar voice told her that he was locked out of his house and that his mother was not home.⁵ She opened the door and discovered that it was a young boy around ten or eleven years old.⁶ Celletti offered to let him use her phone and let him inside the house.⁷ When she tried to close the door, a “tall muscular man’ with black skin, a dark blue jacket, a hood, a scarf,

1. *State v. Johnson*, 199 A.3d 1046, 1048 (R.I. 2019).

2. *Id.*

3. *Id.* at 1050.

4. *Id.* at 1048.

5. *Id.*

6. *Id.*

7. *Id.*

and glasses” stepped into the doorway.⁸ Celletti specifically observed that the man’s glasses were dark grey with scotch tape holding one of the lenses in frame.⁹

The man then drew out a gun with a “dirty silver barrel’ and a brown handle,” pointed it at Celletti’s face, and instructed her to sit down.¹⁰ He told her that he was looking for her son to collect money owed to him.¹¹ “The man handed the gun to the boy and told him to sit in a chair across from Celletti.”¹² The man then made a phone call and a third person entered the home.¹³ The intruders then took items from the house, including Celletti’s cell phone, home phone, televisions, bottles of red wine, coin collections, her son’s wedding band, cash, and more.¹⁴ Before leaving, the man took the gun from the boy and told Celletti, “[i]f you call the cops, I’m coming back.”¹⁵

After the incident, Celletti contacted the police to file a report.¹⁶ A few days later, Providence police Detective Cute (Cute) brought a yearbook from a local school to Celletti, where she identified the young boy who was at her house the night of the robbery.¹⁷ Two weeks later, Cute brought Celletti a photo array which included the Defendant’s photo, but Celletti did not identify any of the men in the photographs as the perpetrator.¹⁸

A few months after viewing the photo array, Celletti called the Attorney General’s office for information about legal proceedings against the young boy.¹⁹ Information she gained from this phone conversation led Celletti to begin searching Facebook for the name “Jodi Johnson,” whom she thought was the third intruder on the night of the incident.²⁰ Celletti searched through many Facebook

8. *Id.*

9. *Id.* at 1049.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* Celletti assumed this third person was a female based on the timbre of her voice, though she never saw this person’s face. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* at 1050.

20. *Id.* Celletti’s conversation with the Attorney General’s office representative was not included in the record. *Id.* at 1050.

profiles under the name “Jodi Johnson,” even trying the search using different spellings of the name.²¹ She came across one picture which was “very familiar,” but the individual in the picture was a male, not female.²² Celletti testified that she recognized this individual because he “looked like the man who came into [her] house with a gun,” based on his eyes and large head.²³ Celletti then went to this individual’s Facebook profile and scrolled through his photos, which included a picture where he was wearing glasses with tape on the corner.²⁴ Celletti became “a hundred percent” certain that the man in the picture was the man who robbed her home and held her at gunpoint.²⁵ She called Cute and walked him through her research and ultimate identification of the Defendant.²⁶

The Defendant was tried before a jury in January 2017.²⁷ At the close of the state’s case-in-chief, the Defendant moved for a judgment of acquittal on the assault charge, because he believed that insufficient evidence had been produced that a firearm was used during the incident.²⁸ The trial justice denied the motion.²⁹ The jury found the Defendant guilty on all counts.³⁰ In March 2017, the trial justice denied Defendant’s motion for a new trial, in which Defendant argued that the jury’s verdict was contrary to the weight of the evidence and Celletti’s testimony.³¹

ANALYSIS AND HOLDING

The Defendant appealed the trial justice’s denial of his motion for a new trial, claiming that the verdict was against the weight of the evidence.³² He asserted that little weight should have been given to Celletti’s testimony identifying him as the perpetrator because Celletti was unable to identify him from a photo array

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 1048.

28. *Id.* at 1050.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

conducted a couple of weeks after the incident.³³ The Defendant also argued that the weight of the evidence did not indicate that an operable firearm was used during the incident.³⁴

When a motion for new trial based on the weight of the evidence is filed, the trial justice “acts as a thirteenth juror and exercises independent judgment on the credibility of witnesses and on the weight of the evidence.”³⁵ On review, the Court explained that factual determinations by the trial justice are given strong deference.³⁶ The Court reviewed the trial justice’s decision, looking for any instances where the trial justice may have overlooked or misconstrued material evidence.³⁷

The Defendant asserted that little weight should have been given to Celletti’s testimony identifying him as the perpetrator for three reasons.³⁸ First, the Defendant contended that Celletti was unable to identify him from a photo array weeks after the incident.³⁹ Second, he argued that Celletti’s claim that she could identify him from the Facebook photos partially based on the picture of him wearing glasses with tape in the corner was inconsistent with the Defendant’s assertion that there were no Facebook photos showing him wearing glasses with tape at the corner.⁴⁰ Third, he argued that Celletti identified him as the perpetrator after a representative from the Attorney General’s office gave her the name “Jodi Johnson” as a potential suspect, leading her to look for someone with that name.⁴¹

In his denial of the Defendant’s motion for new trial, the trial justice concluded that “Celletti’s testimony was consistent and that the few discrepancies . . . ‘did not diminish the weight or significance of [her] testimony.’”⁴² The Defendant suggested that Celletti was given the name “Jodi Johnson” by a representative of the Attorney General’s office and that led to her identifying him as

33. *Id.* at 1051–52.

34. *Id.* at 1051.

35. *Id.* at 1050–51 (citing *State v. Gomez*, 116 A.3d 216, 223 (R.I. 2015)).

36. *Id.* at 1052.

37. *Id.* at 1053.

38. *Id.* at 1051.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 1051–52.

the suspect.⁴³ The prosecution, however, claimed that the name did not lead her directly to identifying the Defendant.⁴⁴ Rather, the name was a starting point for Celletti's Facebook search, which was supported by her testimony that she was looking for a female as she began the search.⁴⁵ Further, as the Court explained, Celletti emphasized at trial that she could identify the Defendant based on "his height, how big he is, [and] his eyes."⁴⁶

The Defendant argued that it was against the weight of the evidence that he possessed an operable gun during the incident.⁴⁷ He contended that Celletti testified only to the color of the gun and that it was pointed at her, but not about whether she or the intruders knew it was operable.⁴⁸ It is well-settled that in cases where the dangerous weapon in question is a firearm, the state must prove that the defendant possessed an operable firearm to prove assault with a dangerous weapon.⁴⁹ The operability of the firearm "may be inferred from the actions and statements of the defendant."⁵⁰ The Court has held that the jury could infer that a firearm was used when a witness testified to being afraid and when the Defendant pointed the gun at the witness.⁵¹ Here, the trial justice concluded that Celletti's testimony that the young boy pointed the gun at her face and the Defendant threatened her that he would come back if she called the cops was sufficient to find that a gun was used in the incident.⁵²

COMMENTARY

Defendant claimed that it was against the weight of the evidence that Celletti could identify Defendant from her own memory of the incident.⁵³ The trial justice did not give much weight to the fact that Celletti received the name "Jodi Johnson"

43. *Id.* at 1051.

44. *Id.* at 1052.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.* (citing *State v. Tillery*, 922 A.2d 102, 107 (R.I. 2007)).

50. *Id.*

51. *Id.* (citing *State v. Andrade*, 657 A.2d 538, 543 (R.I. 1995)).

52. *Id.* at 1053.

53. *Id.* at 1051.

from the Attorney General's office.⁵⁴ At trial, the record only stated that Celletti had a phone conversation with a representative from the Attorney General's office and that, after the conversation, she began searching for the name "Jodi Johnson" on Facebook.⁵⁵ The substance of the conversation was not on the record, likely due to an evidentiary ruling.⁵⁶ This conversation would have likely influenced the trial justice's decision if it demonstrated that Celletti identified the Defendant because she knew he was a potential suspect that the Attorney General was investigating. This would seem to suggest that Celletti could not identify the Defendant solely from her own memory, but rather that she was influenced by an outside factor. The exclusion of this conversation from the record prevented it from being considered with greater weight.⁵⁷

CONCLUSION

The Rhode Island Supreme Court held that the trial justice did not err by denying the Defendant's motion for new trial. The trial justice concluded that Celletti was a credible witness, and that Celletti believed the gun used in the incident was operable. The trial justice agreed with the jury on all three counts. The Court deferred to the trial justice's determination because the trial justice explained and supported his denial of the motion and did not overlook or misconceive any material evidence in denying the Defendant's motion.

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54. *Id.* at 1052.

55. *Id.* at 1050.

56. *See id.*

57. *See id.*