

Roger Williams University Law Review

Volume 26
Issue 3 Vol. 26: No. 3 (Summer 2021)

Article 15

Summer 2021

State v. Parrillo, 228 A.3d 613 (R.I. 2020)

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Recommended Citation

Rivard, Sheya (2021) "State v. Parrillo, 228 A.3d 613 (R.I. 2020)," *Roger Williams University Law Review*. Vol. 26 : Iss. 3 , Article 15.

Available at: https://docs.rwu.edu/rwu_LR/vol26/iss3/15

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Criminal Law and Procedure. *State v. Parrillo*, 228 A.3d 613 (R.I. 2020). A trial justice has the ability in a criminal, jury-waived trial to clarify theories of liability, disregard far-fetched testimony, and draw reasonable inferences from testimony and circumstantial evidence. Per the raise-or-waive rule, if a defendant has concerns regarding a trial justice’s impartiality, these concerns must be raised at the trial court level in order to preserve the issue on appeal.

FACTS AND TRAVEL

In December 2011, complainants, Jacob Fernandes (Fernandes) and his wife, Sumiya Majeed (Majeed), were assaulted by bouncers and the owner of Club 295 in Providence.¹ The incident unfolded when Majeed needed to use the restroom and Paul Vargas (Vargas), the husband of one of Majeed’s coworkers who was familiar with the layout of Club 295, pointed Majeed to the restroom.² At Majeed’s request, Fernandes met her at the restroom to hold the door closed as it could not be secured from the inside.³ Vargas, who testified at trial, said that after pointing Majeed to the restroom he noticed one of the bouncers of the club (Tomas Robinson, principal assailant) putting Fernandes in a chokehold and pulling him toward the patio of the club with Majeed following.⁴ The owner of the club, Anthony Parrillo (Defendant), instructed the bouncers to take Fernandes outside saying, “[n]ot right now. There’s too many people. We will get him later.”⁵ Once outside, two bouncers pinned Fernandes’s arms behind his back and repeatedly hit Fernandes in the face, head, and body while the Defendant held Majeed back from intervening.⁶ Fernandes fell to

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1. *State v. Parrillo*, 228 A.3d 613, 615 (R.I. 2020).
 2. *Id.* at 616.
 3. *Id.*
 4. *Id.* at 617.
 5. *Id.* at 619.
 6. *Id.* at 618.

the ground and Majeed freed herself from Defendant and fell on top of him to cover him while both bouncers continued to kick the couple.⁷ Fernandes suffered serious injuries, including an orbital fracture and dental injuries that required hospitalization and surgery.⁸

Detective Michael Otrando of the Providence Police Department obtained a formal written statement from Vargas detailing the event, showed Fernandes an array of photographs in which Fernandes identified the Defendant as one of the individuals involved in the assault, and later conducted a formal recorded interview of the Defendant.⁹ Detective Otrando concluded that the Defendant took part in the assault on Majeed and conspired with others to assault Fernandes and, “according to evidence, [the Defendant] was present [at the scene] and directing his employees.”¹⁰

A criminal information was filed against the Defendant in Providence County Superior Court, charging him with conspiracy (which was later dismissed),¹¹ one count of felony assault upon Fernandes, and one count of simple assault upon Majeed.¹² The defendant was arraigned and pleaded not guilty and then waived his right to a jury trial.¹³ Trial commenced on April 28, 2015.¹⁴ The Defendant moved to dismiss after the State rested its case, citing insufficient evidence to establish his guilt beyond a reasonable doubt, and a hearing on this motion to dismiss was held on May 7 and 8, 2015.¹⁵ On November 2, 2015, the court heard arguments

7. *Id.*

8. *Id.* at 615.

9. *Id.* at 618–19.

10. *Id.* at 619.

11. *Id.* at 620 (Defendant’s motion to dismiss the conspiracy count was granted as the trial justice determined that standing alone, the plea of Tomas Robinson, a bouncer and principal assailant, did not establish a conspiracy).

12. *Id.* at 616, 619 n.11 (detailing the merger of count one, felony assault upon Fernandes, with serious injury resulting, and count two, assault upon Fernandes with a dangerous weapon into one charge, felony assault, as the two charges were part of the same continuing transaction).

13. *Id.* at 616.

14. *Id.*

15. *Id.* at 619–21 (the trial justice denied Defendant’s motion to dismiss the felony assault and simple assault counts but allowed Defendant to reargue the issue of dismissal as an error of law).

on Defendant's remaining charges of felony assault with serious bodily injury on Fernandes and simple assault on Majeed, and again, Defendant moved to dismiss.¹⁶

In regard to Defendant's simple assault charge upon Majeed, the Defendant called William DeQuattro (DeQuattro), who was friends with Defendant and at the club the evening of the incident, to testify at the trial.¹⁷ DeQuattro testified that Defendant held Majeed, not to hold her back from her husband, but to comfort her.¹⁸ In light of DeQuattro's testimony, Defendant argued that the trial justice would be inappropriately pyramiding inferences if they found Defendant was holding back Majeed to prevent the violence against her husband as there were two equally justifiable inferences that could be drawn, and when there is an inference of guilt and an inference of innocence, an inference in favor of innocence must be drawn.¹⁹ The trial justice was not persuaded by Defendant's arguments regarding the inappropriate pyramiding of inferences and found that given her husband was being beaten, Majeed was not being voluntarily held back and there was enough evidence for the court to find the Defendant as a principal in a simple assault on Majeed.²⁰

Further, in regard to the simple assault charge, the State also noted that the charge was sustained under a theory of aiding and abetting, which was included in the criminal information and pursuant to Rhode Island General Laws section 11-1-3.²¹ When the trial justice inquired as to whether the State was arguing aiding and abetting in regard to the other counts, the State said they did not believe they had the ability to do so as Defendant was not charged under the aforementioned statute in regard to the other counts.²² The court gave the State a brief recess before it made final arguments on whether the aiding and abetting statute could be applied to Defendant in regard to the other counts as it was not

16. *Id.* at 622.

17. *Id.* at 621.

18. *Id.*

19. *Id.* at 622.

20. *Id.* at 622–23 (the State, however, argued that the totality of circumstances pointed to the fact that the Defendant held Majeed while her husband was beaten by Defendant's employees to prevent her from interfering).

21. *Id.* at 619–20 (citing 11 R.I. GEN. LAWS § 11-1-3 (1956)).

22. *Id.* at 619.

specifically cited in the criminal information.²³ After the recess, the State also argued aiding and abetting in regard to the other charges, stating that in order to use the theory, it need not be set forth in the criminal information and does not require proof of an additional element.²⁴ Defendant argued that advancing an aiding and abetting theory was prejudicial.²⁵

The trial justice determined that the State advancing the theory of aiding and abetting did not constitute a new charge, was not prejudicial, and as such, the trial justice would consider the aiding and abetting theory for the felony assault charge.²⁶ Further, the Defendant was afforded an opportunity after he rested his case to call witnesses to alleviate any perceived prejudice relating to the State's advancement of the aiding and abetting theory later in the trial, but Defendant did not present any witnesses.²⁷ Under the theory of aiding and abetting, the trial justice denied to dismiss the felony assault charge as there was a "community of unlawful purpose" and Defendant shared in the intent to inflict serious bodily injury on Fernandes.²⁸

Defendant also argued that had he known he would need to defend against an aiding and abetting theory, he may not have chosen to waive his right to a jury trial.²⁹ However, the trial justice noted that there was an extensive conversation on record with the Defendant that the ultimate decision regarding a jury trial belonged to the Defendant.³⁰

In a bench decision, the trial justice ultimately found Defendant guilty as to both the felony assault and simple assault counts and denied Defendant's renewed motion to dismiss, sentencing Defendant to fifteen years of imprisonment.³¹

23. *Id.* at 620.

24. *Id.* at 620 (citing *State v. Davis*, 877 A.2d 642, 648 (R.I. 2005)).

25. *Id.*

26. *Id.*

27. *Id.* at 621.

28. *Id.*

29. *Id.* at 622.

30. *Id.*

31. *Id.* at 623.

ANALYSIS AND HOLDING

Defendant appealed, advancing four different arguments and the Rhode Island Supreme Court conducted a *de novo* review of the trial justice's conclusions of law.³²

The Defendant's first argument, was that he was deprived of his right to trial by a neutral and detached arbiter, contending that the trial justice coached the State to pursue an aiding and abetting theory.³³ The Court rejected this argument as Defendant did not question the trial justice's impartiality when it was appropriate to do so.³⁴ Because Defendant knowingly waived his right to a jury trial, Defendant should have raised his concerns around the trial justice's impartiality when the issue of aiding and abetting arose.³⁵ Additionally, Defendant was encouraged by the trial justice to research the issue of aiding and abetting when the trial justice granted the State a short recess to research the State's uncertainty of pursuing the theory.³⁶ If the Defendant had wanted to preserve the issue of the trial justice's impartiality for appeal, the Defendant should have made a motion requesting the trial justice recuse himself after the theory of aiding and abetting was advanced.³⁷ Because Defendant did not question the trial justice's impartiality at the appropriate time, pursuant to the raise-or-waive rule,³⁸ the Defendant did not preserve this issue and could not raise an objection or advance a new theory on appeal that was not raised at the trial court.³⁹

In Defendant's second argument, he contended that his conviction should be vacated as the pyramiding of inferences made from the State's circumstantial evidence was speculative and as such, there was insufficient evidence to establish guilt beyond a

32. *Id.* (quoting *Hernandez v. JS Pallet Co.*, 41 A.3d 978, 982 (R.I. 2012)).

33. *Id.*

34. *Id.* at 624.

35. *Id.*

36. *Id.*

37. *Id.* at 624–25 (citing *State v. Howard*, 23 A.3d 1133, 1137–38 (R.I. 2011)).

38. The raise-or-waive rule requires “a *specific* objection to preserve an issue for appeal.” *Id.* at 625 (citation omitted). The Court requires “a specific objection so that the allegation of error can be brought to the attention of the trial justice, who will then have an opportunity to rule on it.” *Id.* (quoting *State v. Pona*, 66 A.3d 454, 468 (R.I. 2013)).

39. *Id.*

reasonable doubt on both convictions.⁴⁰ However, the Court clarified that the State does not have to disprove every possible inference of innocence, “as long as the totality of the circumstantial evidence offered constitutes proof of guilt beyond a reasonable doubt.”⁴¹ Further, the Court explained that the pyramiding of inferences becomes speculative only when the initial inference in the pyramid rests upon an ambiguous fact that is equally capable of supporting guilt or innocence.⁴² Specifically, Defendant contended that based on DeQuattro’s testimony it could be equally inferred that Defendant was holding Majeed to comfort and protect her, and thus, it was improper of the trial justice to infer that Defendant was holding Majeed to prevent her from getting to her husband.⁴³ The Court disagreed with Defendant’s argument stating that DeQuattro’s testimony was so inconsistent with testimony given by other witnesses as to border on being far-fetched, and as such, the trial justice was not wrong in his evaluation of the evidence in the case.⁴⁴ Additionally, the Court determined the trial justice did not err as to an initial inference as the only reasonable inference to be drawn from the evidence at trial was consistent with guilt: Defendant ordered his employees to take Fernandes to the location where the assault escalated and Defendant’s restraint of Majeed after directing his employees to take Fernandes to the back of the club was only consistent with the inference that he held Majeed to prevent her from interfering.⁴⁵ As such, the Court determined that based on the evidence there was nothing speculative about the inferences drawn by the trial justice.⁴⁶

The Defendant’s third argument on appeal was that he was prejudiced by the lack of notice of the “charge” of aiding and abetting in regard to the felony assault charge and had there been timely notice, he may not have waived his right to a jury trial and may have conducted his cross-examination of the State’s witnesses

40. *Id.*

41. *Id.* at 626 (quoting *State v. Caruolo*, 524 A.2d 575, 581 (R.I. 1987)).

42. *Id.* (citing *Caruolo*, 524 A.2d at 582).

43. *Id.* at 627.

44. *Id.* at 628.

45. *Id.*

46. *Id.*

differently.⁴⁷ The Court rejected this argument as there was an extensive conversation with the trial justice that established that Defendant understood it was his decision, not his counsel's, to waive a jury trial.⁴⁸ Additionally, Defendant did not raise the issue of jury waiver until two months after the aiding and abetting theory was introduced.⁴⁹ Further, the Court clarified that aiding and abetting is a theory of liability—not a separate charge or offense.⁵⁰ Per *State v. Davis*, “one who aids and abets in the commission of a crime and is also present at the scene may be charged and convicted as a principal.”⁵¹ As such, Defendant's argument that he was prejudiced by the separate “charge” of aiding and abetting is incorrect.⁵² Additionally, the Court noted that the Defendant could have sought a bill of particulars to clarify the State's theories of guilt.⁵³ Accordingly, the Court rejected Defendant's argument regarding the prejudicial effect of the State's aiding and abetting theory.⁵⁴

Lastly, the Court addressed Defendant's final argument, that if none of the errors standing alone warrants reversal, the cumulative effect of the errors leads to reversible error, and thus, his conviction should be overturned.⁵⁵ The Court dismissed this argument because the trial justice's rulings were not erroneous, and therefore, the cumulative effect doctrine was not available to Defendant.⁵⁶ As such, the Court rejected Defendant's appeal and affirmed the judgement of the Superior Court.⁵⁷

COMMENTARY

The Rhode Island Supreme Court reinforced the importance of timing during the trial court process in mitigating potential

47. *Id.* at 629.

48. *Id.*

49. *Id.*

50. *Id.* at 629–30.

51. *Id.* at 630 (quoting *State v. Davis*, 877 A.2d 642, 648 (R.I. 2005)).

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.* at 630–31 (in his argument, Defendant relied on *State v. Pepper*, 237 A.2d 330 (R.I. 1968)).

56. *Id.* at 631.

57. *Id.*

prejudice and preserving a defendant's arguments on appeal. The Court acknowledged that, in the absence of clear error, trial justices have the power to inquire about theories of liability as well as possess the ultimate discretion in the admission and weight of evidence in a jury-waived trial.

The Court discussed that because the Defendant did not raise the concern of the trial justice's impartiality at the trial court level, thus preserving the issue for appeal, that the Court would abide by the "staunchly adhered" to raise-or-waive rule.⁵⁸ In applying the raise-or-waive rule, the Court reinforced the purpose of the rule in maintaining judicial efficiency by preventing parties, like the Defendant, from litigating issues on appeal that could and should have been addressed at the trial court level. While the raise-or-waive rule recognizes exceptions for constitutional or novel areas of law, straying from this rule in cases such as this, where an exception is not established, could lead to continuous appeals that would overwhelm appellate courts and weaken the importance of the trial court process.

Further, the Court reinforced the trial justice's ability in a criminal case to evaluate evidence and determine inferences based on a totality of the circumstances. A trial justice in a criminal case does not act erroneously when they do not accept implausible evidence or testimony that is inconsistent with guilt, as an inference that a defendant is innocent. This also prevents the prosecution from the arduous process of disproving every possible far-fetched inference. The Court's acknowledgement that extremely implausible testimony does not disturb the trial justice's ability to make appropriate inferences furthers the important purpose of judicial effectiveness and efficiency. Were the trial justice to give equal weight to every possible inference of far-fetched testimony, a defendant could potentially call any witness willing to testify that the defendant acted inconsistently with guilt and the trial justice would have to dismiss the charge or, through the appeals process, the case would have to be reversed. Given the potential harm that forcing trial justices to make improbable inferences would have on the integrity of the criminal justice process, the Court importantly recognized that a trial justice does not engage in an inappropriate pyramiding of inferences by

58. *Id.* at 623, 625.

disregarding absurd testimony and weighing the totality of evidence.

Lastly, the Court also clarified that aiding and abetting is not a separate charge, but a theory of liability under Rhode Island law, and a defendant is not prejudiced by the introduction of this theory in a criminal, jury-waived trial.⁵⁹ Perhaps more importantly, the Court acknowledged the ability of defendants to mitigate the possible surprise of defending against an aiding and abetting theory through requesting a bill of particulars.⁶⁰ In acknowledging Defendant's ability to utilize judicial tools available to him at the trial court level, the Court echoed the importance of zealously engaging in the trial court process to encourage the diligence of counsel and promote the efficiency of the criminal justice system as a whole.

CONCLUSION

In holding that in order to preserve the issue of a trial justice's impartiality for appeal, a defendant must raise this concern at the trial court level, the Rhode Island Supreme Court strongly recognized the importance of criminal defendants utilizing the trial court process efficiently. Further, aiding and abetting is a theory of liability, not a separate charge, and an improper pyramiding of inferences is not established by a trial justice's decision to disregard far-fetched witness testimony. The Court's decision further established the autonomy of trial justices in drawing inferences and clarifying theories as well as the importance of using the trial court process efficiently to preserve future issues for appeal.

Sheya Rivard

59. *Id.* at 629–30; *see also* R.I. GEN. LAWS § 11-1-3 (1956).

60. *Id.* at 630.