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State v. Jones, 242 A.3d 47 (R.I. 2020).

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Criminal Law. *State v. Jones*, 242 A.3d 47 (R.I. 2020). In a defendant’s new trial following a mistrial, the trial justice may disregard the law of the case doctrine and choose to admit evidence of the defendant’s prior convictions that were previously barred if faced with a newly expanded criminal record. The trial justice may admit such evidence to impeach the defendant’s credibility when done in accordance with Rule 609 of the Rhode Island Rules of Evidence. Moreover, the fact that the prior conviction is for a charge similar to the charge the defendant was on trial for does not make the prior conviction *per se* inadmissible for impeachment of the defendant’s credibility.

FACTS AND TRAVEL

On March 4, 2013, the defendant, Matthew Jones (Jones), had a dispute with several of his neighbors about whether he had punched one of them during a previous visit.¹ The argument became physical, though the parties disagreed over the details,² and Jones was charged with two counts of felony assault with a dangerous weapon.³ Jones had his first criminal trial on April 6, 2017, in which the trial justice allowed four of Jones’ previous convictions into evidence.⁴ The trial resulted in a hung jury and a mistrial.⁵

On May 22, 2018, a new trial justice presided over Jones’s second criminal trial.⁶ The trial justice stated before jury selection that “he would ‘not be trapped by the law of the case doctrine’ because he had before him an expanded record,” and reserved his ruling on Jones’s motion to exclude prior convictions so that he could review the convictions “more carefully.”⁷ Then, the trial justice

1. *State v. Jones*, 242 A.3d 47, 50 (R.I. 2020).

2. *Id.* at 50–51.

3. *Id.* at 49.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

heard Jones's motion to exclude prior convictions on the first day of trial outside of the jury's presence.⁸ Jones's defense counsel argued that because he planned to testify, "the jury hearing any evidence of any convictions in his past would be enormously prejudicial"⁹ Defense counsel was particularly concerned about the prejudicial effect of a 22-year-old felony assault conviction.¹⁰ Though defense counsel acknowledged that Jones had been convicted of another felony offense since his mistrial, she argued that the first trial justice did not make an erroneous ruling that justified departing from it.¹¹ The state argued that the first trial justice's ruling on prior convictions did not have "the benefit of knowing that the defendant was having yet another transgression with the law."¹² The state further argued that Jones's newest conviction would help the jury assess his credibility in the upcoming trial.¹³

The trial justice ultimately held that according to Rule 609 of the Rhode Island Rules of Evidence, "the probative value of allowing the state to use defendant's prior convictions for impeachment purposes outweighed the prejudicial effect."¹⁴ Thus, the trial justice admitted Jones's convictions from 1995 forward with some exceptions and conditions.¹⁵ During Jones's cross-examination, in which he conceded his convictions for several charges, the trial justice instructed the jury that Jones's prior convictions should only be used to assess his credibility.¹⁶ Jones was found guilty of both counts of assault with a dangerous weapon, and the trial justice

8. *Id.*

9. *Id.*

10. *Id.* The conviction was in 1996 for armed assault with intent to kill, referenced hereinafter as a felony assault. *Id.* at 50.

11. *Id.*

12. *Id.* at 49–50.

13. *Id.* at 50. The state argued that "the jury should be able to consider whether or not a person who has previously broken the law may have such disrespect for the law as to render him or her unwilling to abide by the oath requiring truthfulness while testifying." *Id.*

14. *Id.* The trial justice also noted that prior convictions are not inadmissible just because they are similar to the offense for which the defendant is currently on trial. *Id.*

15. *Id.* The trial justice ordered that the 1996 conviction for armed assault with intent to kill could only be referenced as a felony assault, and convictions for possession of marijuana, trespass, and vandalism were deemed inadmissible. *Id.*

16. *Id.* at 51.

sentenced him to concurrent terms at the Adult Correctional Institution for each count, with mandatory counseling and anger-management courses once he was released.¹⁷

Jones appealed from the judgement, arguing solely that “the second trial justice abused his discretion by deviating from the law of the case doctrine” in admitting his 1996 felony assault conviction for impeachment purposes.¹⁸ On October 28, 2020, the Rhode Island Supreme Court heard arguments from both parties as to why the issues in Jones’s appeal should not be summarily decided.¹⁹ Determining that the appeal could be decided, the Court affirmed the trial justice’s judgment.²⁰

ANALYSIS AND HOLDING

The Court applied an abuse of discretion standard to its review of the second trial justice’s evidentiary ruling.²¹ The Court considered Jones’s argument that the second trial justice was required to bar Jones’s 1996 felony assault conviction by the law of the case doctrine, but it held that the doctrine did not bar the trial justice from admitting the conviction into evidence.²² The Court explained that the doctrine could be ignored when a ruling in a subsequent case was based on an expanded record.²³ In particular, the doctrine did not “bar [a] second trial justice from considering the admissibility of . . . evidence in the context of [a] new trial.”²⁴ Though the first trial justice did not admit Jones’s 1996 conviction, the Court reasoned that the second trial justice was proper in considering the conviction due to Jones’s expanded criminal record in the face of a

17. *Id.*

18. *Id.*

19. *Id.* at 49.

20. *Id.*

21. *Id.* at 51.

22. *Id.* at 51–52.

23. *Id.* at 51.

24. *Id.* at 51–52 (quoting *Malinowski v. United Parcel Services, Inc.*, 792 A.2d 50, 54 n.4 (R.I. 2002)).

new trial.²⁵ Thus, the Court declined to vacate Jones's judgement based on the law of the case doctrine.²⁶

The Court then considered whether the second trial justice abused his discretion in allowing the state to use Jones's 1996 felony assault conviction to impeach him.²⁷ The second trial justice's ruling was governed by Rule 609 of the Rhode Island Rules of Evidence,²⁸ and the Court highlighted the jury's need "to consider whether or not a person who has previously broken the law may have such disrespect for the law as to render him or her unwilling to abide by the oath requiring truthfulness while testifying."²⁹ The Court noted that the trial justice ordered the state to refer to the conviction as a "felony assault" rather than an "assault with intent to kill," and also gave a limiting instruction to the jury when Jones was cross-examined about his prior convictions.³⁰ With this in mind and given Jones's extensive criminal record and the probative value of his prior convictions in determining his credibility, the Court found that the second trial justice acted within his discretion in deciding that the jury should hear about Jones's 1996 conviction.³¹ Lastly, the Court emphasized that the similarity between a defendant's current conviction and a prior conviction does not make the prior conviction inadmissible *per se* to impeach the defendant's credibility.³²

COMMENTARY

The Rhode Island Supreme Court relied on precedential case law in its analysis of the second trial justice's departure from the law of the case doctrine and application of Rule 609 of the Rhode

25. *Id.* at 52. The Court distinguished rulings on admissibility based on the Rhode Island Rules Evidence from rulings on the admissibility of constitutionally challenged evidence, and it found that the second trial justice made his differing ruling based on the Rules of Evidence. *Id.* at n.1.

26. *Id.* at 52.

27. *Id.*

28. *Id.* "Rule 609 . . . permits the admission of a witness's prior conviction to attack that witness's credibility unless the court determines that the prejudicial effect of the conviction substantially outweighs its probative." *Id.* (quoting *State v. Whitfield*, 93 A.3d 1011, 1017 (R.I. 2014)).

29. *Id.* (quoting *Whitfield*, 93 A.3d at 1017).

30. *Id.*

31. *Id.*

32. *Id.* at 53.

Island Rules of Evidence.³³ Given these precedents, Jones had a difficult road ahead of him in arguing that his 1996 conviction should not be admitted in his second trial. However, Jones's extensive criminal record also placed him at a disadvantage before the Court. The Court called out Jones's history of twelve prior convictions over two decades,³⁴ and noted that "[a] defendant's disdain for the law as reflected by his or her criminal record" is one of the factors available to a trial justice in a 609 evidentiary ruling on admitting prior convictions.³⁵

The Court's ruling on Jones's similar prior conviction is worrying since it is hard to believe that a jury would not misuse this type of evidence for propensity reasons. The law of the case doctrine is also weakened by this decision as trial justices in subsequent trial scenarios will be able to undo previously determined evidentiary rulings based on what seems like an exception meant to penalize certain defendants. It will be interesting to see how many trial justices utilize this decision in the future, either to rationalize divergence from the law of the case doctrine or to admit similar prior convictions for impeachment purposes. Either result suggests harder criminal trials for many defendants in the future.

CONCLUSION

The Rhode Island Supreme Court held that a trial justice did not abuse his discretion in disregarding the law of the case doctrine when he admitted a prior conviction that was not admitted in the defendant's first trial because the trial justice was allowed to consider the defendant's expanded criminal record in the face of a new trial. The Court also determined that the trial justice acted within his discretion in allowing the state to use the defendant's prior

33. The Court quoted *Chavers v. Fleet Bank (RI)*, 844 A.2d 666 (R.I. 2004), and *Malinowski v. United Parcel Service, Inc.*, 792 A.2d 50 (R.I. 2002), in its analysis of the law of the case doctrine. *Id.* at 51–52. It used several quotes from *State v. Whitfield*, 93 A.3d 1011 (R.I. 2014), in its analysis of Rule 609. *Id.* at 52–53.

34. *Id.* at 52.

35. *Id.* (quoting *Whitfield*, 93 A.3d at 1017).

conviction to impeach his credibility in accordance with Rule 609 of the Rhode Island Rules of Evidence.

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