

# Roger Williams University Law Review

---

Volume 28  
Issue 3 *Vol. 28, No. 3: Summer 2023*

Article 27

---

Summer 2023

## State v. Hudgen, 272 A.3d 1069 (R.I. 2022).

Judd W. Krasher

*Candidate for Juris Doctor, Roger Williams University School of Law*

Follow this and additional works at: [https://docs.rwu.edu/rwu\\_LR](https://docs.rwu.edu/rwu_LR)



Part of the [Criminal Procedure Commons](#), [Evidence Commons](#), [Law and Gender Commons](#), [Sexuality and the Law Commons](#), and the [State and Local Government Law Commons](#)

---

### Recommended Citation

Krasher, Judd W. (2023) "State v. Hudgen, 272 A.3d 1069 (R.I. 2022).," *Roger Williams University Law Review*: Vol. 28: Iss. 3, Article 27.

Available at: [https://docs.rwu.edu/rwu\\_LR/vol28/iss3/27](https://docs.rwu.edu/rwu_LR/vol28/iss3/27)

This Survey of Rhode Island Law is brought to you for free and open access by the School of Law at DOCS@RWU. It has been accepted for inclusion in Roger Williams University Law Review by an authorized editor of DOCS@RWU. For more information, please contact [mwu@rwu.edu](mailto:mwu@rwu.edu).

**Procedure.** *State v. Acosta*, 247 A.3d 489 (R.I. 2021). A superior court judge did not err in denying a defendant’s motion for a new trial after a jury convicted the defendant of one count of first-degree sexual assault and three counts of second-degree child molestation because the trial justice properly applied the independent assessment of evidence and witness credibility in assessing a new trial motion.

#### FACTS AND TRAVEL

The state of Rhode Island charged Antonio Acosta, the defendant, with first-degree sexual assault and second-degree child molestation.<sup>1</sup> The victim, Ivy,<sup>2</sup> considered Acosta her grandfather.<sup>3</sup> During Ivy’s early childhood, Acosta dated Ivy’s grandmother.<sup>4</sup> Before Acosta harmed Ivy, Ivy had a “good” relationship with the defendant.<sup>5</sup> Ivy alleges that Acosta began to harm her in 2008 during Ivy’s eleventh birthday party.<sup>6</sup>

The first<sup>7</sup> victimization occurred at the defendant’s home in 2009 when Ivy was twelve.<sup>8</sup> Ivy was watching television in the defendant’s bedroom while other house guests, including her

---

1. *State v. Acosta*, 247 A.3d 489, 490 (R.I. 2021).

2. *Id.* The Court noted that at the time of trial the victim identified as male, but the victim agreed to have female pronouns used during the trial because he identified as female when he was victimized. See *id.* Accordingly, the Court uses female pronouns in its decision and so does this review for the sake of consistency. As a general matter, however, a trans individual’s current pronouns should be respected.

3. *Id.* at 491.

4. *Id.*

5. The state did not file charges against Acosta for this incident. See *id.* Thus, the jury did not explicitly decide the veracity of Ivy’s statements surrounding the 2008 incident. The incidents following 2008 were explicitly decided by the jury and, accordingly, will be discussed as a matter of fact, not allegation.

6. *Id.* at 491.

7. Specifically, this is the first incident in the timeline of events that the state criminally charged the defendant.

8. *Acosta*, 247 A.3d 489, 491.

grandmother, were playing dominoes in a different room.<sup>9</sup> At some point the defendant came into the bedroom to show Ivy band instruments.<sup>10</sup> The defendant tried to kiss Ivy and, despite Ivy telling the defendant to stop, fondled her chest and vagina.<sup>11</sup> During the assault, Ivy's aunt entered the bedroom.<sup>12</sup> The defendant began to pretend he was reaching for an object over Ivy's head.<sup>13</sup> Ivy's aunt left the room after a few moments; Ivy did not tell her aunt something was wrong because Ivy was afraid her grandmother would also find out.<sup>14</sup> Ivy did not want her grandmother to know because she was worried about her grandmother's suffering with mental health issues.<sup>15</sup>

The next victimization for which the defendant was charged occurred at Ivy's grandmother's home in summer 2011 when Ivy was thirteen.<sup>16</sup> While Ivy's grandmother and siblings were outside in the pool, Ivy was indoors using her grandmother's computer.<sup>17</sup> The defendant approached Ivy and groped her breasts.<sup>18</sup> Despite Ivy telling the defendant to stop, he did not stop until Ivy's grandmother could be heard approaching the room.<sup>19</sup> After her grandmother exited the computer room, the defendant handed Ivy thirty dollars.<sup>20</sup> However, Ivy's grandmother testified that Ivy did not spend summers at her home, only weekends.<sup>21</sup>

The third victimization occurred in 2012 when Ivy was fourteen.<sup>22</sup> After the defendant took Ivy shopping to a nearby mall, the defendant took Ivy out driving.<sup>23</sup> At some point, the defendant pulled into a parking lot, put his hands down Ivy's pants, and

---

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.* at 493.

22. *Id.* at 492.

23. *Id.*

assaulted her.<sup>24</sup> The defendant countered Ivy's recounting of the event by testifying that Ivy's friend accompanied them.<sup>25</sup>

Later in 2012, Ivy revealed to the defendant that she is gay and identifies as trans.<sup>26</sup> The crux of the defendant's case relied on this revelation because, according to the defendant, he revealed Ivy's sexuality and gender identity to other family members.<sup>27</sup> In December 2012, at a family gathering, Ivy allegedly told the defendant that he was "going to pay" for revealing information told to him in confidence.<sup>28</sup> While Ivy denied making any threat, her testimony about whether she told the defendant her sexual orientation and gender identity in confidence was conflicted.<sup>29</sup>

In January of 2013,<sup>30</sup> Ivy revealed the assaults to her school guidance counselor.<sup>31</sup> Soon after, the victim gave statements about the incidents to the Department of Children, Youth, and Families and to the police.<sup>32</sup> Thereafter, a criminal investigation ensued, and Ivy spoke to a grand jury wherein she offered conflicting testimony.<sup>33</sup>

#### ANALYSIS AND HOLDING

After the jury returned guilty verdicts, the defendant filed a motion for a new trial on the basis that the evidence did not support the convictions.<sup>34</sup> The trial justice denied his motion and the question before the Rhode Island Supreme Court is of whether the trial justice erred.<sup>35</sup> In order for the Court to overrule the trial justice, the Court would need to ". . . perceive reversible error in the trial justice's analysis of the motion for a new trial or in his conclusion that the motion should be denied . . . ." <sup>36</sup> The defendant's appeal

---

24. *Id.*

25. *Id.* at 493.

26. *Id.* at 492.

27. *Id.* at 493.

28. *Id.* at 492.

29. *Id.*

30. This approximates the timeline given the victim's and defendant's testimonies.

31. *Id.* at 492.

32. *Id.*

33. *See id.* at 492, 495.

34. *Id.* at 494.

35. *Id.*

36. *Id.* at 495.

centered on two arguments. First, the defendant argued that the trial justice failed to consider “Ivy’s motive to lie” given Ivy’s alleged statements about seeking retribution against the defendant after the defendant revealed to other family members that Ivy is gay and trans.<sup>37</sup> Second, the defendant argues that Ivy’s reports of sexual assault lack corroboration.<sup>38</sup> The Court conducted a *de novo* review and found that the trial court properly weighed the evidence and witness credibility in denying the defendant’s new trial motion.<sup>39</sup>

The Court found that the entire case “rested entirely upon the credibility of [the victim] and defendant.”<sup>40</sup> Thus, “[the] trial justice must consider the evidence in light of the jury charge, then independently assess the credibility of the witnesses, and...determine whether [she] would have reached a different result from that reached by the jury.”<sup>41</sup> The Court recognized that pieces of testimony were in conflict and that Ivy’s demeanor during trial did not necessarily lend itself to credibility.<sup>42</sup> For example, the trial justice also explicitly considered the “displeasure, frustration, sort of really didn’t want to be here at the time, attitude” of Ivy during cross examination.<sup>43</sup>

Moreover, the Court considered the discrepancies and conflicting information within the testimonies.<sup>44</sup> With respect to varied testimony and Ivy’s demeanor, the trial justice noted that the young victim is struggling with gender and sexuality identification while dealing with estrangement from her family.<sup>45</sup> The trial justice concluded that considering the unique circumstances of the victim and sufficient detail of the different incidents of sexual assault, the victim’s testimony was “reasonably and sufficiently credible.”<sup>46</sup> In light of the trial court’s analysis, the Court ruled that it was “unable to perceive reversible error in the trial justice’s analysis...” and that

---

37. *Id.* at 494.

38. *Id.*

39. *Id.* at 494.

40. *Id.* at 495.

41. *Id.* at 494-95 (quoting *State v. Gumkowski*, 223 A.3d 321, 328 (R.I. 2020)).

42. *Id.* at 495.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

it was “satisfied that the trial justice . . . properly carried out the detailed analysis that must be carried out when passing upon a motion for a new trial . . . .”<sup>47</sup>

The Court also dismissed defendant’s argument that Ivy’s testimony lacked independent corroboration. In *State v. Rathburn*, the Court held that, “[t]his Court has explicitly eliminated any requirement of independent corroboration for sex-offense cases because the corroboration requirement arbitrarily singles out victims of sex offenses as a class whose credibility is immediately suspect.”<sup>48</sup> Accordingly, the victim’s credible testimony was all that the law requires for a conviction of sexual offenses.<sup>49</sup>

#### COMMENTARY

The Rhode Island Supreme Court said that “this was a close and troubling case.” □ Therefore, it is plain to see how the Rhode Island Supreme Court’s ruling could have gone the other way, particularly given the Court’s considerable discretion when conducting *de novo* review and doubts surrounding the credibility of the accuser. Here, the Court proceeded with laudable care in considering the unique factors of this case.

Few other criminal matters require the level of thought, detail, and attention as child sex offenses deserve. The harm these crimes inflict on the victim lasts a lifetime, and those harms often extend to the larger community. Victims deserve as much justice as the legal system can provide. Lack of access to justice for trans youth continues to plague our legal system, however. The Court’s consideration of the victim’s personal struggles indicates refreshing sensitivity to the plight of trans youth. The Court was not under any obligation to give any weight to the victim’s hardships in realizing their sexual and gender identities, but it did. Hopefully, the Court, and our legal system writ large, continues to strive towards deeper understanding in considering these challenging cases. This increased sensitivity contributes to the broader goal of bringing equity to our legal system.

---

47. *Id.*

48. *Id.* at 496 (quoting *State v. Rathbun*, 184 A.3d 211, 218 (R.I. 2018)).

49. *Id.*

## CONCLUSION

Given a trial justice's proximity to the evidence and witnesses at trial, great deference is given to their decisions on motions for a new trial. In a case dealing with the sexual assault of a youngster that spanned years, the trial justice refused to grant a new trial motion. The Rhode Island Supreme Court upheld the decision as properly following well-settled law on how a trial justice must rule on new trial motions. Here, the trial justice found that reasonable minds could differ on the conviction, which meant the motion for a new trial failed.

Judd W. Krasher