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## State v. Hampton-Boyd, 253 A.3d 418 (R.I. 2021)

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**Criminal Law.** *State v. Hampton-Boyd*, 253 A.3d 418 (R.I. 2021). The trial justice retains significant discretion to instruct the jury as consistent with the law. As part of that determination, the trial justice can consider whether jury instructions or trial advocacy is the best forum for explaining cross-racial identification to the jury. Additionally, notice of the State’s intention to use the habitual offender sentencing enhancement can be given at a pretrial conference, even if it is more than forty-five days following arraignment.

#### FACTS AND TRAVEL

In the early morning hours on April 8, 2017, the victim, Rafael Fernandez (Fernandez) was robbed at gunpoint by the defendant, Gregory Hampton-Boyd (the defendant), outside of the Masheratti Lounge (the club) in Providence, Rhode Island.<sup>1</sup> Fernandez suffered three gunshot wounds after a brief struggle with the defendant.<sup>2</sup> The defendant blocked Fernandez’s entrance into the vehicle after Fernandez refused to give the defendant his gold chain.<sup>3</sup> Despite his injuries, Fernandez attempted to pursue his attacker but stopped when he heard gunshots coming from across the street and saw who he believed to be a friend of the defendant.<sup>4</sup>

An officer in the area heard the shots and began pursuit of a dark sedan fleeing the scene.<sup>5</sup> After another officer picked up the pursuit, the passenger of the sedan exited the moving vehicle and fled on foot.<sup>6</sup> The pursuing officer continued to follow the sedan while another began to follow the passenger on foot.<sup>7</sup> Before he could pursue the fugitive, the officer noticed the passenger, a black

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1. *State v. Hampton-Boyd*, 253 A.3d 418, 420 (R.I. 2021).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* at 421.

6. *Id.*

7. *Id.*

male, dropped a gold chain and a firearm.<sup>8</sup> The officer decided to forego pursuit and waited for the Bureau of Criminal Investigation.<sup>9</sup> The passenger, who lost his shoe while exiting the vehicle, was apprehended and identified as the defendant.<sup>10</sup>

Consequently, in an interview at the hospital shortly after the shooting, Fernandez described the robber as a black man and the other shooter as a Puerto Rican man.<sup>11</sup> Fernandez later provided the police with a more specific description of his assailant, stating that he was “a black male, around 5 feet 10 inches tall, with a thin build, clean cut with a beard, and wearing a long gold chain with a Jesus head medallion.”<sup>12</sup>

Upon his release from the hospital, a club employee sent Fernandez video from inside the club on the night of the robbery, which showed the defendant.<sup>13</sup> Fernandez also identified the defendant as his assailant when the police showed him a photo array days later.<sup>14</sup> During his formal statement, Fernandez informed police that he was “100 percent sure” the defendant was the individual who tried to rob him and signed a statement that supported that claim.<sup>15</sup>

On June 29, 2017, the defendant was indicted on one count of first-degree robbery, among other charges.<sup>16</sup> The state, on September 7, 2017, served the defendant with notice that he would be subject to an additional sentence upon conviction as a habitual offender because the defendant had four prior convictions in Massachusetts.<sup>17</sup> The defendant filed a motion to preclude the state from pursuing the habitual offender statute against him but the trial

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8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 421–22.

16. *Id.* The defendant was also indicted for conspiracy to commit robbery, two counts of carrying a pistol without a license, possession of a firearm despite a prior conviction of a crime of violence, knowing possession of a stolen firearm, assault with a dangerous weapon, and being armed with a stolen firearm during the assault. The court eventually dismissed the charges relating to conspiracy, knowing possession of a stolen firearm, and being armed with a stolen firearm during the assault.

17. *Id.*

justice denied it, holding it was not ripe until after the jury announced its verdict.<sup>18</sup>

At trial, Fernandez identified the defendant as his attacker, an allegation, along with Fernandez's out-of-court identifications, that the defendant did not refute during the proceeding. The defendant requested that the trial justice instruct the jury on cross-racial eyewitness identification, but the trial justice declined, instead finding that his own eyewitness identification instruction was sufficient.<sup>19</sup> The trial justice's instruction, in relevant part, read that the jury "may consider...any ethnic or racial differences between the witness and the assailant" in assessing the reliability of an eyewitness.<sup>20</sup>

Subsequently, the jury found the defendant guilty of first-degree robbery, assault with a dangerous weapon, discharge of a firearm during a crime of violence resulting in injury, and one charge of carrying a pistol without a license.<sup>21</sup> Pursuant to a stipulation, the trial justice also found the defendant guilty of unlawful possession of a firearm by an individual convicted of a crime of violence.<sup>22</sup> The defendant's motion for a new trial was denied by the trial justice following the verdict.<sup>23</sup> The trial justice, partially based on the defendant's status as a habitual offender, rendered a lengthy sentence.<sup>24</sup>

The defendant appealed his conviction to the Rhode Island Supreme Court, arguing that the trial justice erred in refusing to instruct the jury on cross-racial identification and that the defendant was not given adequate notice of the state's intention to use the habitual offender enhancement.<sup>25</sup>

#### ANALYSIS AND HOLDING

The Rhode Island Supreme Court, through an opinion authored by Justice Erin Lynch Prata, affirmed the trial justice's holdings on the defendant's motions. The Court held that the trial justice

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18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.* at 423.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* at 424.

correctly instructed the jury on cross-racial eyewitness identification, noting that the trial justice retains significant discretion when instructing the jury. Additionally, the Court held that the state gave proper notice to the defendant of its intention to seek an enhanced sentence under the habitual offender statute.

#### A. *Jury Instruction*

The Court began its inquiry by noting that jury instructions are reviewed *de novo*.<sup>26</sup> The Court acknowledged that “[w]hile a defendant may request that the trial justice include particular language in the jury instructions, the trial justice is not required to use any specific words or phrases when instructing the jury— so long as the instructions actually given ‘adequately cover the law.’”<sup>27</sup> The Court concluded its outline of the applicable standard of review by acknowledging that “[a] trial justice’s refusal to grant a request for jury instruction is not reversible error if the requested charge is fairly covered in the general charge.”<sup>28</sup>

The Court then applied these jury instruction principles to cross-racial identification principles to the case at hand.<sup>29</sup> The Court explained that contrary to the defendant’s cited case law from other jurisdictions, Rhode Island has never required a trial justice to instruct a jury on cross-racial identification.<sup>30</sup> The Court recognized that in *State v. Davis*, it stated that “the better practice would be for courts to provide the jury with more comprehensive instructions when eyewitness testimony is an issue.”<sup>31</sup> While this quote seemingly favors the defendant, the Court pointed out that this was declared “aspirational dictum” in *State v. Fuentes*.<sup>32</sup> The Court further stated that the trial justice retains significant discretion to determine whether the instruction is warranted.<sup>33</sup>

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26. *Id.* (citing *State v. Fuentes*, 162 A.3d 638, 644 (R.I. 2017)).

27. *Id.* (first quoting *State v. Adefusika*, 989 A.2d 467, 477 (R.I. 2010)); (then quoting *State v. Palmer*, 962 A.2d 758, 764, 769 (R.I. 2009)).

28. *Id.* (first quoting *State v. Hallenbeck*, 878 A.2d 992, 1008 (R.I. 2005)); (then quoting *State v. Lynch*, 854 A.2d 1022, 1044 (R.I. 2004)).

29. *Hampton-Boyd*, 253 A.3d at 424.

30. *Id.*

31. *Id.* (quoting *State v. Davis*, 131 A.3d 679, 697 (R.I. 2016)).

32. *Id.* (quoting *State v. Fuentes*, 162 A.3d 638, 644 (R.I. 2017)).

33. *Id.*

As part of its affirmation of the trial court decision, the Court agreed with the trial justice's findings that there is no requirement to provide the jury with such an instruction.<sup>34</sup> The Court agreed with the trial justice that the instruction may take away from the jury's fact-finding role and that advocacy is the best method to make this point to the jury.<sup>35</sup> The Court made this finding by relying on *State v. Hadrick*, which found that a similar instruction "might be construed as commentary on the quality or credibility of particular evidence."<sup>36</sup>

The Court did acknowledge that cross-racial identification has undergone a period of recent wide-spread acceptance.<sup>37</sup> Nevertheless, despite this period of change, the Court dismissed the defendant's argument that its exclusion was in error by citing substantial evidence that pointed towards the defendant's guilt.<sup>38</sup> The defendant was apprehended while wearing just one shoe with the other shoe being recovered near where the passenger fled the vehicle.<sup>39</sup> Additionally, multiple police officers identified the defendant as the individual who fled the vehicle.<sup>40</sup>

The Court did, however, express concern over the way the instruction was given.<sup>41</sup> While not finding it to be a reversible error, the Court wrote that "simply stating that the jury may consider differences in race and ethnicity without further context for that instruction is not an appropriate charge."<sup>42</sup> The Court noted that, in the future, trial justices need to instruct juries on how to consider differences in race for eyewitness identification.<sup>43</sup> This can be accomplished by justices working with counsel to determine what the appropriate contextual remarks must contain.<sup>44</sup> The Court affirmed that the instruction was without error because both parties

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34. *Id.*

35. *Id.*

36. *Id.* (citing *State v. Hadrick*, 523 A.2d 441, 444 (R.I. 1987)).

37. *Id.* at 425.

38. *Id.* at 426.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

had the chance to impeach the identification in their closing arguments.<sup>45</sup>

For the foregoing reasons, the Court affirmed the trial justice's jury instructions because they adequately covered the law "as it existed at the time."<sup>46</sup>

### B. *Due Process*

Next, the Court rejected the defendant's argument that the state did not provide adequate notice of its intention to use the habitual offender sentencing enhancements.<sup>47</sup> The Court reviewed the trial justice's decision *de novo*.<sup>48</sup> The defendant asserted that because the state failed to notify him of their intentions within forty-five days of his arraignment, the state lost the opportunity to use the enhancement.<sup>49</sup> Though the Court acknowledged that adequate notice helps the defendant understand the full range of potential punishments, the Court declined to adopt the defendant's position.<sup>50</sup>

The Court pointed to *State v. Peterson*, which held that "the language from 12-19-21, 'but in no case later than the date of the pretrial conference,' allowed for extensions to the forty-five-day period set forth in the statute."<sup>51</sup> In light of this, the Court held that notice given at the pretrial conference complied with the Court's precedent and the defendant's right to due process was not infringed upon.<sup>52</sup>

### COMMENTARY

Cross-racial identification is a serious concern in cases where eyewitness identification is essential. In times where racial disparities are at the forefront of social debate, the judiciary must be weary of the high risk that eyewitness misidentification poses. Here, that risk seems minimal. The defendant was identified by several police officers, was seen on club surveillance video, and was

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45. *Id.* at 427.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* (quoting *State v. Peterson*, 722 A.2d 259, 264–65 (R.I. 1998)).

52. *Id.* at 428.

apprehended with only one shoe; the matching shoe was found where the passenger fled the vehicle. This wealth of evidence helped decrease the jury's reliance on Fernandez's testimony. Because of this, the trial justice exercised proper discretion given to him to instruct the jury as consistent with the law. Thus, it can be easily argued that the Supreme Court correctly affirmed the trial justice's instruction.

Moreover, the Court correctly applied the law as articulated in *Peterson* to the facts of this case.<sup>53</sup> The state properly provided the defendant with notice of its intention to seek the habitual offender sentencing enhancement. Prior case law shows that the defendant is entitled to notice at any time before the date of his pretrial conference. Though this notice surely decreased the effectiveness of the defendant's preparations for the conference, it was consistent with the state's obligations. The Court correctly called on the legislature to take up the issue of notice so that a defendant would be more adequately prepared for the hearing. Despite this, the Court appropriately applied the law as it was in effect at the time.

#### CONCLUSION

The Rhode Island Supreme Court held that a trial justice maintains the authority to instruct the jury on cross-racial identification within his or her discretion so long as that instruction adequately covers the applicable law. The Court further held that notice delivered to the defendant on the date of a pretrial conference is sufficient to comport with due process requirements.

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53. 733 A.2d at 264–65.