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1997 Survey of Rhode Island Law: Cases: Criminal Law

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Criminal Law. *State v. Doctor*, 690 A.2d 321 (R.I. 1997). Absent an offer of proof by defense counsel, the supreme court finds no abuse of discretion in the trial judge's ruling limiting that attorney's further cross-examination of a witness.

FACTS AND TRAVEL

On August 11, 1990, three men shot into a car stopped in traffic on Eddy Street in Providence, Rhode Island. The car contained six passengers. As a result of that shooting, one passenger, Willie Davis, died. One shot hit passenger Rodney Perry in the shoulder. John Norman, Kimani Morris, Mark Ellis and Ronald Nelson were the remaining passengers.[1] Alexis and Jose Doctor (Alexis and Jose or the defendants) were two of the gunmen. The third alleged gunman was a juvenile, Douglas "Junior."[2] This was the third jury trial for Alexis and Jose.[3]

At that third trial, three of the passengers were witnesses for the State. They were Norman, Nelson and Ellis. By this time, Kimani Morris had died.[4] Norman testified that the surrounding street lights illuminated the shooting location. He identified the gunmen as the defendants, and Junior.[5] He recognized the gunmen because he had known Alexis and Jose for several years. Norman had known Junior for about one year.[6] Norman described the fusillade. The gunmen began shooting into the vehicle. This continued for about five minutes. Then the three gunmen ran behind a nearby night club. At that time, Norman noticed that Davis

1. *See* State v. Doctor, 690 A.2d 321, 323 (R.I. 1997) (*Doctor II*).

2. *See id.* The supreme court reversed Junior's conviction in family court on two counts of assault with intent to murder for improper restriction of cross-examination for bias or motive. *See In re* Douglas L., 625 A.2d 1357 (R.I. 1993).

3. The first trial began in February of 1992. The court declared a mistrial when a State witness invoked his Fifth Amendment privilege in front of the jury. *See Doctor II*, 690 A.2d at 323. The second trial, which began in March of 1992, resulted in convictions. However, the supreme court reversed those convictions because the trial judge improperly restricted the scope of defense counsel's cross-examination of a trial witness. *See* State v. Doctor, 644 A.2d 1286 (R.I. 1994) (*Doctor I*).

4. *See Doctor II*, 690 A.2d at 326.

5. *See id.* at 323-24.

6. *See id.* at 324.

and Perry were shot. He accompanied them to Rhode Island Hospital.[7]

The State called another passenger in the car, Nelson, to testify. He was not a cooperative witness.[8] He testified that he did not know the identity of the gunmen. Nelson explained that his prior statements to Providence Police officers, his previous identification of Jose and Alexis and a prior statement given at the Alexis's family court waiver hearing, were all incorrect.[9]

A third passenger, Ellis, also testified. He testified that on the night of the shooting, he had been drinking alcohol and smoking marijuana, and he had taken mescaline.[10] Ellis stated that he could not see who shot into the car nor did he see Alexis or Jose Doctor. He did see, however, that the gunmen were wearing large hooded sweatshirts covering their faces.[11]

The State also called Willie Davis's aunt, Vicky Brown Strong (Strong), as a witness.[12] Strong had been socializing outside of a house on Rhodes Street in Providence, Rhode Island, on the night of the shooting. She drank two wine coolers and had smoked marijuana. However, she claimed that this had not affected her recollection. She was still "very positive" about that night's events.[13]

Strong testified that when she arrived outside the Rhodes Street address, Alexis was there. Shortly thereafter, Jose and Junior arrived independently.[14] Alexis, Jose and Junior showed each other their guns. Then, the three men left together in Junior's car. Strong heard Alexis say to Jose and Junior, "[l]et's go do this."[15]

Strong further testified that about forty-five minutes later, Alexis and Jose returned to the Rhodes Street address. Junior was not with them. They ran out of Junior's car and into Jose's car. Strong said that Jose was running "like he was scared to death."[16] Alexis was jumping up in the air, with his gun in hand, hollering.[17]

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7. *See id.*
8. *See id.* at 325.
9. *See id.*
10. *See id.*
11. *See id.*
12. *See id.* at 324.
13. *Id.*
14. *See id.*
15. *Id.*
16. *Id.*
17. *See id.*

Later that evening, Strong discovered that her nephew, Willie Davis, was shot. She went to Rhode Island Hospital with her daughter. She did not give a statement to police at that time. In fact, Strong reported, police had harassed her and pushed her away.[18]

Strong explained that she did not testify in the first two trials because she had not given a statement to police.[19] She also explained that her boyfriend was a truck driver, and she was out of town frequently with him during the earlier proceedings.[20] However, Strong had testified at a family court hearing involving Alexis. At about the time of the second trial, she had also spoken to a Department of Children, Youth and Families' officer.[21]

In order to impeach Strong, the defense called a Providence Police sergeant, Keith Tucker (Tucker).[22] Tucker was assigned to internal affairs. He testified that he had no record of Strong filing a complaint relating to Davis's murder. Tucker also testified that Strong had filed no report alleging hostile treatment from the police at Rhode Island Hospital.[23]

Both Alexis and Junior testified in their own defense. Jose testified that he had been outside the Rhodes Street house until about eight or nine p.m., at which time he went to a McDonald's restaurant. Then he went to a night club on Eddy Street, in Providence, where he had a beer. He went home to bed about a half-hour to forty-five minutes later.[24] Alexis also admitted that he was present outside the Rhodes Street house. Alexis left there about seven p.m. to visit friends on Laura Street in Providence. At ten p.m., he went home. Alexis believed that his brother, Jose, was already home. However, Jose's room, which was in the basement, had a separate entrance. Jose could enter and leave without traveling through the main part of their house.[25]

The jury found Alexis and Jose guilty on charges of murder, conspiracy and two counts of assault with a dangerous weapon.[26]

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18. *See id.*
19. *See id.*
20. *See Id.*
21. *See id.*
22. *See id.*
23. *See id.*
24. *See id.* at 325-26.
25. *See id.* at 326.
26. *See id.* at 323.

Alexis and Jose raised two claims of error on appeal. The first claim was that the trial judge erred in prohibiting the defense from pursuing its cross-examination of Strong on bias.[27] The second claim was that the trial judge should have granted the defendants' motion for a new trial because Norman recanted his previous trial testimony.[28] The supreme court upheld the trial judge's denial of the motion for a new trial because the trial judge had concluded Norman's new testimony was a "perjurious attempt to help the defendants get away with murder."[29]

This survey piece will concentrate on the issue of cross-examination on bias. The defense wanted to pursue its cross-examination of Strong on the issue of bias and motive for testifying as she did.[30]

BACKGROUND

"The United States Constitution's Sixth Amendment right of confrontation guarantees an accused the right to an effective cross-examination in all criminal matters."[31] Cross-examination is the principal means of testing the credibility of a witness and the truthfulness of his testimony.[32] The Rhode Island Constitution also guarantees a defendant's right to cross-examination.[33]

The art of cross-examination provides counsel with the opportunity to discredit the witness's testimony as necessary.[34] An acceptable method of impeaching one's testimony is by showing "that a witness has bias or prejudice toward one of the parties or has a personal interest in the outcome of the case which can be expected to color his testimony and undermine its reliability."[35]

A trial court may not properly require offers of proof with respect to inquiries made during cross-examination except in unu-

27. *See id.* at 326.

28. *See id.* at 329.

29. *Id.* at 330.

30. *See id.* at 326.

31. State v. Anthony, 422 A.2d 921, 923-24 (R.I. 1980) (citing Davis v. Alaska, 415 U.S. 308, 315-16 (1974); Douglas v. Alabama, 380 U.S. 415, 418 (1965)).

32. *See id.*

33. *See Doctor I*, 644 A.2d at 1290 (citing R.I. Const. art. I, § 10).

34. *See In re* Douglas L., 625 A.2d 1357, 1360 (R.I. 1993) (citing *Davis*, 415 U.S. at 316).

35. *Id.* (quoting State v. Eckhart, 367 A.2d 1073, 1075 (R.I. 1977)).

sual and peculiar circumstances.[36] Counsel often cannot know in advance what pertinent facts he or she will elicit on cross-examination. For that reason, cross-examination is necessarily exploratory, and the rule that the examiner must indicate the purpose of his or her inquiry does not apply.[37] In a fair trial, the cross-examiner must have reasonable latitude, even though he or she is unable to state to the court what facts a reasonable cross-examination might develop.[38]

The scope of cross-examination is within the trial judge's discretion.[39] A trial judge has the discretion to limit cross-examination once there has been sufficient cross-examination to satisfy a defendant's confrontation rights.[40] In addition, the trial judge can exclude irrelevant evidence, even if it purports to show bias.[41] The trial judge will halt a fishing expedition on cross-examination when it becomes obvious that the pond is devoid of fish.[42]

ANALYSIS

The defendants suggested that Strong was aware of a civil suit filed by Davis's mother, her sister, pursuant to the Criminal Injuries Compensation Act.[43] The defense theory was that Strong lied when she denied knowing about that suit.[44] At trial, the defense counsel wanted to cross-examine Strong to show that Strong thought that a conviction in the Doctors' case was a prerequisite to her sister's recovery in the civil suit.[45] However, the trial judge

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36. *See* Calci v. Brown, 186 A.2d 234, 236 (R.I. 1962).

37. *See* State v. DeBarros, 441 A.2d 549, 551 (R.I. 1982) (citing Alford v. United States, 282 U.S. 687, 691-92 (1931)).

38. *See id.*

39. *See* State v. Crescenzo, 332 A.2d 421, 427 (R.I. 1975).

40. *See* State v. Brennan, 527 A.2d 654, 657 (R.I. 1987) (citing State v. Burke, 522 A.2d 725, 733 (R.I. 1987)).

41. *See* State v. Veluzat, 578 A.2d 93, 95 (R.I. 1990).

42. *See* State v. Brennan, 527 A.2d 654, 657 (R.I. 1987).

43. R.I. Gen. Laws §§ 12-25-1 to 12-25-12.1 (1956) (1994 Reenactment) may be cited as the "Criminal Injuries Compensation Act of 1972." R.I. Gen. Laws § 12-25-1.1 delineates the transition to the "Criminal Injuries Compensation Act of 1996," established pursuant to § 12-25-16 through § 12-25-30. *See* 1996 R.I. Pub. Laws, ch. 434, § 3.

44. *See Doctor II*, 690 A.2d at 326.

45. *See id.*

pointed out that the language of the Compensation Act precludes the necessity of a conviction before recovery.[46]

Strong had denied any knowledge of that civil suit. The defendants wanted to show that Strong did know of her sister's civil suit, and additionally that she believed that the defendants' convictions were necessary for recovery in that suit. Defense counsel opined that if proven, these facts could offer a sufficient basis for Strong's less-than-truthful testimony.[47] The trial judge did not allow this cross-examination. Counsel for the defense posed this question: "[H]as she communicated to you what, if anything, she's going to do about this incident? . . . [W]hat she's going to do with—about this case?"[48] Strong answered, "no, I don't know." At that point, the trial judge stopped defense counsel's further questioning of the witness.

The Rhode Island Supreme Court found that the defendants had full opportunity to inquire about whether Strong had any knowledge of her sister's civil action brought under the Criminal Injuries Compensation Act.[49] The trial judge did not abuse his discretion by limiting further inquiry concerning the sister's pending civil action.[50] Strong had testified that she had no knowledge of the matter. There was no point in continuing cross-examination on that subject.[51]

The supreme court suggested that, if defense counsel believed he had not adequately exhausted his opportunity to explore for any signs of bias in Strong, then he could have indicated to the trial judge what he was pursuing.[52] He could have made an offer of proof pursuant to Rule 26(b) of the Rhode Island Superior Court Rules of Criminal Procedure.[53]

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46. R.I. Gen. Laws § 12-25-3(f) (providing in pertinent part that "[a]n order may be made under this section whether or not any person is prosecuted or convicted of any offense arising out of the act").

47. *See Doctor II*, 690 A.2d at 326.

48. *Id.*

49. *See Doctor II*, 690 A.2d at 327.

50. *See id.*

51. *See id.*

52. *See id.*

53. Rule 26(b) of the Rhode Island Superior Court Rules of Criminal Procedure provides in pertinent part: "an action tried by a jury, if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what he or she expects to prove by the answer of the witness."

Defense counsel had informed the trial judge that the court could not "require" him to make an offer of proof on cross-examination.[54] In *State v. DeBarros*,[55] the court held that a trial court may not properly require offers of proof with respect to inquiries made during cross-examination except in unusual and peculiar circumstances.[56] In *Doctor II*, the supreme court explained that *DeBarros* is not opposite Rule 26(b). Rule 26(b) permits offers of proof, but does not mandate such offers.[57] An offer of proof must be adequate to indicate to the court that the subject matter was germane to the issue of bias.[58]

In this case, if defense counsel made an offer of proof, then the supreme court would be in a better position to determine whether the trial judge abused his discretion in terminating defense counsel's cross-examination.[59] The court could not review whether further cross-examination on bias was indicated because there was no record of where the questioning was going to lead.[60] If defense counsel had alerted the trial judge to information otherwise not available to him, then he might have allowed the cross-examination to continue. Defense counsel could have requested a sidebar conference to preserve his offer of proof for later review.[61] Absent that offer of proof, the supreme court was unable to perceive any abuse of discretion in the trial judge's ruling.[62]

CONCURRENCE

Chief Justice Weisberger did not agree with the majority's implied criticism of the doctrine enunciated in *State v. DeBarros*. He believed that any erosion of *DeBarros* was unnecessary to sustain the evidentiary ruling of the trial judge in this case.[63] Rule 26 does not discuss offers of proof on cross-examination. The language of the rule is general, and should properly apply to direct examina-

54. *See Doctor II*, 690 A.2d at 328.
55. 441 A.2d 549 (R.I. 1982).
56. *See id.* at 551 (citing Calci v. Brown, 186 A.2d 234, 236 (R.I. 1962)).
57. *See Doctor II*, 690 A.2d at 327.
58. *See DeBarros*, 441 A.2d at 551.
59. *See Doctor II*, 690 A.2d at 327.
60. *See id.*
61. *See id.*
62. *See id.*
63. *See id.* at 331-32 (Weisberger, C.J., concurring).

tion.[64] If a trial judge believes that a subject has been exhausted, then it is appropriate to seek guidance from counsel concerning the goal of further examination. This query is different from an offer of proof, which the chief justice would not require on cross-examination.[65]

CONCLUSION

The scope of cross-examination is not unlimited: "Where a defendant seeks in cross-examination to open up new avenues of inquiry concerning the motive of a third party . . . the trial judge may properly exclude such evidence . . . , absent an offer of proof by the defendant . . . ."[66] Ordinarily, offers of proof during cross-examination are not required. However, Rule 26(b) of the Rhode Island Superior Court Rules of Criminal Procedure permits an attorney to make an offer of proof in any instance where the judge sustains an objection to his question.[67] In a trial where the judge prevents defense counsel from continuing further cross-examination of a witness, an offer of proof would preserve the record for later review.

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64. *See id.* at 331.
65. *See id.* at 332.
66. *See* State v. Brennan, 526 A.2d 483, 488 (R.I. 1987) (quoting State v. Gazerro, 420 A.2d 816, 825 (R.I. 1980)).
67. *See* State v. Crescenzo, 332 A.2d 421, 427 n.1 (R.I. 1975).

Criminal Law. *State v. Gomes*, 690 A.2d 310 (R.I. 1997). Under Rhode Island Rule of Evidence 404(b), in a prosecution for child-molestation sexual assault, the victim's testimony of uncharged acts committed against her is admissible to show the defendant's "lewd disposition" toward the victim.

FACTS AND TRAVEL

In *State v. Gomes*,[1] a jury convicted the defendant, Ernest Gomes (Gomes), of sexually molesting his granddaughter, Fran Doe.[2] Gomes began molesting Fran when she was five-years old and continued until she was eleven-years old.[3] The first instances of abuse occurred at Fran's grandparents' house where Gomes would make Fran watch pornographic movies and dance for him, initially clothed and later unclothed.[4] When Fran was seven-years old, Gomes forced her to "manually stimulate him and perform fellatio on him."[5]

Gomes later separated from his wife and moved in with Fran and her mother, Carol Doe.[6] At this time, the assaults on Fran continued regularly.[7] When Fran was about nine-years old, her family, including Gomes, moved to a new house in Providence, Rhode Island.[8] Two of the incidents for which the State charged Gomes occurred at this new residence. During one incident, the defendant coerced Fran to perform oral sex on him. In the other instance, the defendant forced Fran to have sexual intercourse with him.[9] Soon after, Carol Doe fought with Gomes over another matter and ceased having contact with him.[10]

At age fourteen, Fran began having problems with her mother and was later placed in a Department of Children, Youth, and Families (DCYF) residential treatment program.[11] While there,

1. 690 A.2d 310 (R.I. 1997).
2. *See id.* at 312 (stating that Fran Doe is a fictitious name).
3. *See id.*
4. *See id.*
5. *Id.* at 313.
6. *See id.* (stating that Carol Doe is also a fictitious name).
7. *See id.*
8. *See id.*
9. *See id.*
10. *See id.*
11. *See id.*

she revealed her grandfather's molestation to a social worker and then informed her mother.[12] The abuse was not reported to police until Fran was seventeen-years old.[13]

The grand jury was presented with the charges and returned true bills on five counts of child-molestation sexual assault.[14] The jury returned guilty verdicts on two counts of first-degree child-molestation sexual assault and one count of second-degree child-molestation sexual assault.[15] The trial judge denied the defendant's motion for a new trial.[16] The defendant appealed, arguing that the testimony of the victim concerning uncharged sexual acts committed by the defendant was improperly admitted in light of the Rhode Island Supreme Court's decision in *State v. Quattrocchi.*[17]

BACKGROUND

Under Rhode Island Rule of Evidence 404(b), evidence of prior bad acts is not admissible to show that the accused acted in conformity with those bad acts at the time in question. Rule 404(b) reads:

> Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or

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12. *See id.*

13. *See id.* at 312.

14. *See id.*

15. *See id.* Before trial, one charge was dropped because of a statute-of-limitations problem. *See id.* Due to a lack of evidence, another count, involving digital penetration, was dismissed after the State rested. *See id.* at 313.

16. *See id.* at 313.

17. *See id.* at 316-17; *see also* State v. Quattrocchi, 681 A.2d 879 (R.I. 1996). The defendant also argued that potential jurors should have been questioned individually and outside of the presence of others, when asked their personal experience with sexual abuse or molestation. *See Gomes,* 690 A.2d at 314. The judge asked the jurors whether "the subject matter or personal experience make it impossible for them to be impartial." *Id.* at 316. The court ruled that individual voir dire was not required because the way in which the trial judge combined the two questions allowed the jurors to ask to be dismissed without feeling embarrassed. In fact, ten jurors did ask to be dismissed; therefore, individual questioning may have been more intimidating. *See id.*

> to prove that defendant feared imminent bodily harm and that the fear was reasonable.[18]

The listed exceptions are examples and "are neither mutually exclusive nor collectively exhaustive."[19] Some courts have recognized another exception, sometimes called the "lewd" or "lustful-disposition" exception.[20] Under this exception, during a sexual-offense trial, courts allow evidence of prior sexual misconduct into evidence to show the lustful disposition of the accused toward the victim.[21] Evidence of prior sexual acts is often used with a young victim to show the propensity of the accused to abuse children sexually.[22] Some state courts allow testimony of prior sexual acts by the accused on a third party to come into evidence.[23]

In *State v. Jalette*,[24] the State intended to introduce testimony of the victim's mother concerning prior uncharged acts of child molestation committed by the defendant against the victim.[25] The Rhode Island Supreme Court, adopting the reasoning of the California Supreme Court in *People v. Kelley*,[26] stated:

> (1) evidence of other not too remote sex crimes with the particular person concerned in the crime on trial may be introduced to show the accused's 'lewd disposition or . . . intent' towards the person, (2) evidence that the accused committed nonremote similar sexual offenses with persons other than the victim may be admitted to prove the presence of the traditional exceptions to the general rule, such as intent or motive, with a caveat that evidence of other acts with other persons may be shown on the issue of intent only if it is absolutely necessary, such as instances in which the accused admits the act but claims that it was an accident or a mistake, and (3)

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18. R.I. R. Evid. 404 (b).

19. John William Strong et al., McCormick on Evidence, § 190, at 799 (4th ed. 1992).

20. 1A John H. Wigmore, Evidence, § 62.2, at 1335 (Tillers Rev. 1983). Federal Rules of Evidence 413 through 415 now incorporate this exception by allowing, in cases of sexual assault and child molestation, evidence of prior acts of sexual misconduct on any matter which the prior act is relevant. Fed. R. Evid. 413-15.

21. *See* Wigmore, *supra* note 20, at 1335.

22. *See* Lisa M. Segal, Note, *The Admissibility of Uncharged Misconduct Evidence in Sex Offense Cases: New Federal Rules of Evidence Codify the Lustful Disposition Exception*, 29 Suffolk U. L. Rev. 515, 526-27 (1995).

23. *See* Wigmore, *supra* note 20, § 62.3 at 1348.

24. 382 A.2d 526 (R.I. 1978).

25. *See id.* at 528-29.

26. 424 P.2d 947 (Cal. 1967).

> any doubt as to the relevancy of such evidence should be resolved in favor of the accused.[27]

The Rhode Island Supreme Court stated that, although prior acts are generally not admitted to show action taken in conformity with these acts, "there has been a marked tendency to admit this type of evidence for precisely this purpose in cases involving sexual offenses."[28] The court also said that "[i]t is generally recognized that courts have extended a greater latitude of proof as to like occurrences when considering sexual offenses than has been permitted in the trial of other criminal charges."[29]

This type of evidence is subject to three restrictions. First, the prosecution should use evidence of other acts sparingly and "only when reasonably necessary."[30] The court should not admit the evidence if it is "purely cumulative and not essential to the prosecution's case."[31] Second, the admissibility of other-acts evidence is limited to cases where it is "relevant to proving the charges lodged against the defendant."[32] Finally, the trial judge should give an appropriate limiting instruction, designating "with particularity the specific exception to which the evidence is relevant."[33] In *State v. Cardoza*,[34] the exception was "extended to cover testimony by the victim concerning uncharged acts."[35]

Five years after *Jalette*, in *State v. Pignolet*,[36] the court extended the exception by allowing the victim's sister to testify to three attempted assaults on her by the defendant.[37] All but one of the attempted assaults took place during the same time frame as the assaults against the victim.[38] The court allowed the testimony

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27. *Jalette*, 382 A.2d at 533.
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.*
34. 465 A.2d 200 (R.I. 1983).
35. *Id.* at 203. The court also allowed into evidence prior acts of sexual misconduct with the sister of the complaining witness. *See id.*; *see also* State v. Messa 542 A.2d 1071 (R.I. 1988) (allowing evidence of prior acts of sexual misconduct which happened a year prior to the act charged with a victim who was not named in the complaint).
36. 456 A.2d 176 (R.I. 1983).
37. *See id.* at 180.
38. *See id.*

to come into evidence and stated that the evidence tended to show the "defendant's lecherous conduct toward[s]" the young victim.[39]

In *Pignolet*, the extension of *Jalette* to sexual conduct of the defendant with another victim was warranted where "the uncharged conduct is so closely related in time, place, age, family relationships of the victims, and the form of the sexual acts."[40] The court emphasized that both children lived in the same house, were sisters and were both being abused by their stepfather.[41]

Thirteen years later, in *State v. Quattrocchi*,[42] the court held that testimony of two prior uncharged sexual acts, committed against witnesses not related to the victim, was improperly admitted under Rhode Island Rule of Evidence 404(b).[43] Explaining its decision, the court stated the holding in *Pignolet* "represented the extreme beyond which we are unwilling to extend the other-crimes—or bad-acts—exception."[44] Evidence of prior sexual acts is highly prejudicial. The jury is likely to view the defendant as a bad person who has done this before and "therefore, probably committed the offense with which he is charged."[45] The *Quattrocchi* court held that the testimony of the other sexual incidents was improperly admitted, under both Rule 404(b) and the court's decisions in *Jalette* and *Pignolet*, because no family relation existed between the victim and the witnesses.[46]

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39. *Id.* at 182.

40. *Id.* at 181.

41. *See id.* at 181-82.

42. 681 A.2d 879 (R.I. 1996).

43. *Id.*; *see also* R.I. R. Evid. 404(b). The prosecution presented evidence of two incidents of uncharged sexual encounters against the defendant. *See Quattrocchi*, 681 A.2d at 887. The first incident involved the defendant's goddaughter Lydia, and took place in the summer of 1977 when Lydia was seven-years old. *See id.* at 885. Lydia testified that while she was showering after a swim, the defendant, naked, walked into the bathroom, and he let her leave only after Lydia threatened to scream. *See id.* The second incident involved Claudia, a family friend, who accused the defendant of rubbing her breast. *See id.* Scared, Claudia ran out into the street where she found a police officer who arrested the defendant. The case was presented to a grand jury, which returned a finding of "no true bill." *Id.*

44. *Quattrocchi*, 681 A.2d at 886; *see also* State v. Bernier, 491 A.2d 1000, 1004-05 (R.I. 1985) (holding that *Pignolet* was "limited to situations in which the testimony of siblings of tender years was necessary in order for the state to meet its burden of proof")

45. *Quattrocchi*, 681 A.2d at 886.

46. *See id.* at 887. Justice Flanders dissented, stating that the distinction made in *Pignolet* was not a sensible one. *See id.* at 890-91 (Flanders, J., dissent-

ANALYSIS AND HOLDING

In *Gomes*, responding to a motion in limine filed by the defendant, the prosecution argued that the uncharged incidents of sexual abuse were "necessary to show a special relationship between [Fran] and the grandfather."[47] The evidence was relevant to show "a common scheme on the part of defendant to abuse the special relationship he had with his granddaughter."[48] Defense counsel argued that it was merely cumulative and therefore should not be admitted. The trial judge admitted the testimony as tending "to show defendant's common design and plan in respect to the victim and that it was relevant in that it showed his attitude regarding sexual activity with the victim."[49]

The defense argued that *Quattrocchi* had "cast doubts on the rule of *Jalette*."[50] The court stated *Quattrocchi* concerned testimony regarding uncharged sexual acts against a witness other than the victim, not uncharged acts committed against the victim.[51] In *Quattrocchi*, the court was unwilling to extend the lustful-disposition exception to include witnesses who lived outside the victim's household.[52] The court stated that "[n]othing in our opinion in *Quattrocchi* casts doubt upon the use of other-acts testimony to show a lewd disposition toward the victim herself."[53]

The court next looked at the three criteria set down in *Jalette* to decide if the testimony here was properly admitted. The trial judge found the evidence necessary, not cumulative, and relevant to the prosecution's case.[54] The trial judge also "listed the specific uses for which the evidence was being admitted" and gave to the

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ing). Instead, he reasoned that the admissibility of the prior acts should be determined by the relationship between the defendant and his victim. *See id.* at 892.

Instead of using an unsound distinction, Justice Flanders stated that the evidence should be admitted to show the defendant has a lewd disposition "toward a certain class of persons of which the complaining child witness is a member." *Id.* If the exception is going to be used, then "it does not appear to me to be a great leap beyond these already existing exceptions to permit the introduction into evidence of the defendant's sexual assault of one or more of his godchildren or, for that matter, of any other young girl in his or his family's circle of acquaintances." *Id.*

47. *Gomes*, 690 A.2d at 316.
48. *Id.*
49. *Id.*
50. *Id.* at 317.
51. *See id.*
52. *See id.*
53. *Id.*
54. *See id.*

jury an appropriate limiting instruction.[55] The court held that the trial judge "adhered closely" to the three restrictions set forth in *Jalette*.[56] Appropriate limitations were given for the admission of the testimony of the uncharged acts. Therefore, they were properly admitted under both *Jalette* and *Quattrocchi*.

CONCLUSION

Gomes clarifies the intended uses for uncharged sexual acts committed against the victim and which limitations apply. *Quattrocchi* showed the concerns of the court in allowing evidence of prior acts to be presented in a case involving sexual abuse. *Quattrocchi* did not dispose of the "lewd-disposition" exception, but limited its use to cases where a family relation exists between the victim and the witness. In *Gomes*, the court set the limits for the admission of testimony of prior sexual acts while also making it clear the exception was still viable.

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55. *Id.*
56. *Id.* at 316.