

STATE OF RHODE ISLAND

WASHINGTON, SC.

SUPERIOR COURT

(FILED: January 30, 2025)

STATE OF RHODE ISLAND,
Plaintiff,

v.

RICHARD MCGRATH,
Defendant.

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C.A. No. W1-2021-0428A

DECISION

THUNBERG, J. This matter is before the Court for decision after the conclusion of a trial conducted without the intervention of a jury. Defendant has moved for dismissal of the within charge pursuant to Rule 29(b) of the Superior Court Rules of Criminal Procedure, arguing that the trial evidence is insufficient to establish guilt beyond a reasonable doubt. In the alternative, should the Defendant not prevail upon the aforesaid motion, he petitions the Court to enter a verdict of not guilty.

The consideration of a Rule 29(b) motion requires the trial justice to assume the role of fact finder. “In that role . . . [the Court] is required to weigh and evaluate the trial evidence, pass upon the credibility of the trial witnesses, and engage in the inferential process, impartially, not being required to view the

inferences in favor of the nonmoving party, and against the moving party.” *State v. McKone*, 673 A.2d 1068, 1072-73 (R.I. 1996).

I

Facts and Travel

McGrath is charged in a single count indictment with second degree child molestation; specifically, that on a day or date between June 1, 1986 and July 31, 1986, he did engage in sexual contact, to wit, hand to penis, with Edward Baxter,¹ a person thirteen years of age or under. The locus of the alleged incident was Camp Yawgoog (“the Camp”) in Rockville, Rhode Island,² where at the relevant time, a Boy Scouts of America (“BSA” or “The Boy Scouts”) summer camp was located.

Edward, who was forty-nine years old at the time he testified, joined The Boy Scouts when he was eleven years old, affiliating himself with Troop 5 of Charlestown, Rhode Island. In June of 1986, at age eleven, he was enrolled in the Camp for two weeks. During orientation, he connected with a staff member, Jonathan Bernard, who was like a “big brother” to him. (Trial Tr. 11:1-2, May 16-18, 2024 (Tr.)) Indeed, Jonathan’s mother was formerly Edward’s babysitter, and the entire Bernard family was like a “second family” to Edward. (Tr. 11:1.) It was

¹ This is a fictitious name being utilized to conceal the identity of the complaining witness. The Court will also refer to Edward as “Complainant” or “Mr. Baxter.”

² “Yawgoog Scout Reservation” is an 1800 acre wilderness camp, founded in 1916 and operated by the Boy Scouts of America. *About Camp Yawgoog*, Camp Yawgoog (last visited Jan. 27, 2025), <https://www.yawgoog.org/about.html>.

Jonathan who introduced the Defendant, as “Mike,” to Edward, and indicated that McGrath was Edward’s patrol/troop leader for the week. Notably, Jonathan’s brothers, Jamie and Robert, were also on the Camp premises, working as staff members, during the pertinent period of time.

Sometime after their arrival, Defendant and approximately twenty scouts made a plan to go on an overnight hiking and camping trip. Edward brought a blanket and mosquito netting to the campsite, but he did not bring a sleeping bag or a tent. Defendant did bring a tent with him, which he set up about thirty feet away from the fire pit. (Tr. 24:4-5.) At some point, while the campfire was still burning, Defendant approached Edward and awakened him. Defendant, according to Edward, then asked the Complainant to join him in his (Defendant’s) tent because he was “afraid . . . [that the Complainant] was going to freeze to death[.]” (Tr. 25:20-22.) Defendant specifically requested that Edward “sleep in the tent with him . . . in his sleeping bag with him.” (Tr. 27:3-4.) Edward did not wish to comply with this request, but he eventually relented due to Defendant’s insistence.

While they were “spooning” in the sleeping bag, Defendant started rubbing Edward’s feet with his own feet, saying that Edward’s feet were “freezing.” (Tr. 30:8-16.) After a little while, Defendant “started rubbing [Edward’s] thighs” with “just one hand.” (Tr. 30:17-18, 32:7-12.) Defendant, while doing so, simultaneously “growl[ed]” and bit Edward’s ear “four or five times.” (Tr. 34:3-8.)

The Complainant was “just frozen with fear” and “tried to pretend that [he] was sleeping. (Tr. 35:5-10.) Defendant then put his hand inside of Edward’s pants and touched his penis and genitals with a rubbing motion for approximately half an hour. (Tr. 36:8-37:10.) Edward made no attempt to extricate himself from the sleeping bag because “[h]e was terrified” and “frozen in fear.” (Tr. 38:3-5.) Edward then fell asleep and woke up to a “motion” behind him, which, as he “got older,” came to realize was the Defendant “masturbating.” (Tr. 38:10-13.) During this entire episode, there was another scout sleeping, mere feet away, in the tent.

Edward told no one about this incident the next day; and, as a matter of fact, did not reveal these allegations to anyone for the ensuing thirty-four years. Edward explained that he did not “tell Jonathan or any of the other . . . staff members or adults there” because Defendant was “a police officer,” or “told us he was a police officer,” and he did not “think anyone was going to believe [him.]” (Tr. 43:1-15.) Edward also thought that he “was going to get blamed because [he] didn’t bring [his] sleeping bag with [him.]” (Tr. 43:11-13.)

Testimony was then elicited from Edward concerning his “adult life.” He explained that after graduating from high school he served as a Boatswain’s Mate in the United States Coast Guard from 1996 to 2000. His areas of responsibility included “search and rescue, narcotics interdiction, fisheries enforcement, AMIO, which is Alien Migrant Interdiction Operations, and military readiness.” (Tr. 52:2-

6.) Geographically, his missions—the majority of the time—took place in the Caribbean and South America. Unfortunately, during his service, Edward encountered “difficulties with drinking” and “issues with . . . bipolar and PTSD.” (Tr. 52:18-20.)

After going absent without leave, AWOL, on four occasions, Edward received an honorable discharge, “under . . . unacceptable conduct[.]” (Tr. 53:14-15.) He then worked in Boston “for a couple of years,” but his “mental health issues became a lot, . . . lot worse.” (Tr. 53:23-25.) He also developed “substance abuse issues” and had a diagnosis of “Bipolar 1, PTSD, [and] anxiety disorder.” (Tr. 54:1-5.) Edward specified that although he “struggle[ed] with alcohol in the Coast Guard,” his drug usage of “cocaine, opiates, [and] benzos” occurred “post-Coast Guard.” (Tr. 55:16-22.) In 2002, Edward was declared unemployable due to 100 percent disability from “PTSD and bipolar.” (Tr. 57:13-18.) Ultimately, he became, and remained, dedicated to meeting his challenges and attained sobriety around 2012. (Tr. 56:18.)

During his testimony, Edward was very forthcoming and frank about the struggles and challenges he had to cope with and overcome with the assistance of professional intervention and treatment. He had descended into such a state of despair that in 2002, within a one-week period, he attempted to take his own life three times. (Tr. 55:1-5.) After being treated at Rhode Island Hospital, Edward was

referred to Gateway Healthcare, a nonprofit behavioral health organization, for mental health evaluation and treatment. This was followed by seventeen years of therapy, from 2003 to 2020, at the Veterans' Administration Hospital (V.A.).

A V.A. medical record from November 2003 states that Edward is a twenty-eight-year-old Caucasian male with a history of bipolar disorder diagnosed one year ago after a series of three suicide attempts within a one-month period. The record also reflects that Edward was having five panic attacks per week, "P.T.S.D. [symptoms] related to drug seizures and search and rescue missions as part of his job in the Coast Guard, including intrusive memories, hyper-vigilance," and "[p]atient has a short fuse, got into [two] fistfights in the last week and has been having difficulty functioning, unable to go to work secondary to his mood symptoms." (Jt. Ex. 1A, 1428.) Edward also complained of having nightmares related to drug raid missions. Sadly, he also described a history of physical abuse inflicted upon him by his mother, (also bipolar), who struck him and threw things at him. At the age of seven, he "went to live with his father and . . . was happy after that." (Jt. Ex. 1A, 1446.)

Edward testified that the alleged molestation at the Camp occurred when he was ten years old. However, he did not disclose the incident to anyone, including his numerous therapists, psychologists, and psychiatrists, until 2020. At that time, he learned that "Annie's Bill" had been signed into law, which "extended the

statute of limitations for . . . sexual assault for civil suits.” (Tr. 61:15-24.) This prompted him to retain an attorney to file a civil claim against the Boy Scouts.

Within a “couple of days” of hearing about Annie’s Bill, Edward told his wife, his father, and Jonathan Bernard about the Camp incident. (Tr. 63:18-64:7.) Edward actually telephoned Jonathan Bernard and asked him for the name of a camp volunteer, at the time, who was “[a] police officer from Massachusetts.” (Tr. 64:17-65:9.) Edward subsequently located various photos of his stay at the camp and he identified “Mike” McGrath, (the name furnished by Jonathan Bernard), as the perpetrator. Edward filed a criminal complaint at the suggestion of his doctor at the V.A., who recommended that he go to “Day One.”³ Day One representatives then referred him to the Rhode Island State Police with whom he “first spoke . . . formally,” in August of 2020. (Tr. 76:1-17.)

II

Standard of Review

Rule 29(b) of the Superior Court Rules of Criminal Procedure states: “In a case tried without a jury, a motion to dismiss may be filed at the close of the State’s case to challenge the legal sufficiency of the State’s trial evidence.” Super.

³ “Day One R.I.,” according to its webpage, “is the only agency in Rhode Island that is specifically organized to deal with issues of sexual assault as a community concern.” The agency provides treatment, intervention, education, and advocacy solutions for survivors of sexual assault. *Who We Are*, Day One R.I. (last visited Jan. 23, 2025), <https://dayoneri.org/about/who-we-are-overview>.

R. Crim. P. 29(b). “If the evidence is not so sufficient [as to establish guilt beyond a reasonable doubt], he or she grants the motion and dismisses the case.” *McKone*, 673 A.2d at 1073.

III

Analysis

In support of this Rule 29(b) motion to dismiss, Defendant submits that the evidence presented by the State is insufficient to prove the case against him beyond a reasonable doubt. Defendant points out, correctly, that the Complainant “told no one, including the ‘Bernards,’ his troop, his family, his medical provider, or anyone else for that matter, until June of 2020 after he had seen that the Rhode Island Legislature extended the civil Statute of Limitations to [thirty-five] years so persons could pursue monetary damages against the Boy Scouts of America, which he promptly did, by making a civil claim in the pending Bankruptcy action.” (Def.’s Rule 29(b) Mot. Dismiss after State’s Case in Chief, Renewed Mot. after Defense Case and Closing Arg. (Def.’s Mot.), 2.) In the bankruptcy application, the Complainant “stated [that] the alleged event occurred in 1985 when he was [ten] years old. Thereafter, he supplemented the petition and stated . . . that the alleged incident occurred in 1986 or 1987.” *Id.*

The State counters that the fact that there is a thirty-four year gap between the approximate date of the alleged incident and disclosure is “not uncommon or

unusual . . . [l]ike many survivors of sexual abuse, particularly boys who were victimized by men, Mr. [Baxter] struggled with a great deal of shame and embarrassment associated with the assault.” (State’s Closing Mem., 15.)

A thorough review of Edward’s voluminous medical and counseling records, spanning seventeen years, reveals, compellingly, an open, candid, and trusting professional relationship between patient and therapist.

Each of the numerous caregivers documented their interactions and conversations with their patient in extensive detail. It is difficult to accept the suggestion that Edward was “too embarrassed” to reveal the alleged molestation to anyone over the course of seventeen years of treatment and a span of thirty-four years since the incident. It appears that he told his providers everything impactful that had happened to him, including recurrent nightmares not based in reality, such as those about his Coast Guard service in which he was being bitten by sharks and drowning with a boat flipped over on top of him, (Tr. 119:1-9), or being shot multiple times, bleeding, and dreaming that he’s jumping off a bridge. (Jt. Ex. 1A, 1016.)

Although in some portions of the medical reports it is noted that he was abused as a child by his mother, he also told one of his psychiatrists that his “childhood” was traumatic with a “psychiatrically ill mother setting fire to [the] house [and] abusing [his siblings,]” but he “doesn’t remember any abuse to him?”

(Jt. Ex. 1A, 1039.) He repeated to another psychiatrist that his “mother was physically abusive to [his] half-siblings, but [he] cannot recall abuse to him; [and] also denies sexual/emotional abuse.” *Id.* at 946-47. There is one entry in the records, dated October 27, 2020, in which the provider states that Edward, who was forty-five years old, said he “never told anyone about the Boy Scout leader before.” *Id.* at 39. There is no elaboration on this comment.

The evidentiary burden of “proof beyond a reasonable doubt,” which the Court is obligated to apply, is the highest standard of proof in the criminal justice system. When this Court instructs jurors regarding this rigorous standard of proof, it tells them—in part—that if they are making an important decision for themselves or a loved one, and they hesitate or pause before making that decision, it means that they have a “reasonable doubt.” The jury is further instructed that the State is obligated to present evidence which is so convincing and so compelling as to leave in their minds no reasonable doubt about Defendant’s guilt. The jurors must have a firm and lasting belief that the accusation is true. Furthermore, the accused is entitled to the benefit of any doubt based on reason.

An examination of the evidentiary record in this matter does cause the Court to pause or hesitate before securely and firmly drawing the conclusion that Defendant has been or can be proven guilty beyond a reasonable doubt. This hesitation includes the identity of the perpetrator, if indeed the incident occurred in

the manner described by the Complainant. Mr. Baxter is to be commended for his fortitude in coming forward and for facing and overcoming the many challenges he has encountered since he was a child. However, the presumption of innocence to which every accused is constitutionally entitled can be extremely difficult to overcome, even in the face of compelling testimony.

The Complainant had many years of intense therapy—the medical records display an open and trusting relationship between caregiver and patient. It is perplexing that Edward kept this incident to himself for thirty-four years. He did not tell his father, with whom it appears he was and is close, or either of his wives, until he learned of the alteration in the statute of limitations. Additionally, he said nothing to any of the Bernard brothers, including “big brother” Jonathan, all of whom were present at the Camp at the time of the incident and accessible to him.

Under the particular circumstances presented and considering the evidence and/or lack of evidence as applied to the requisite standard of proof, the Court is compelled to GRANT Defendant’s Motion to Dismiss.

IV

Conclusion

Defendant Richard McGrath’s Motion to Dismiss is **GRANTED**. Counsel shall submit the appropriate order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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CASE NO: W1-2021-0428A

COURT: Washington County Superior Court

DATE DECISION FILED: January 30, 2025

JUSTICE/MAGISTRATE: Thunberg, J.

ATTORNEYS:

For Plaintiff: Jonathan E. Burke, Esq.
Mark J. Trovato, Esq.

For Defendant: John Manni, Esq.