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State high court upholds Gardiner's conviction in witness intimidation case

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The state Supreme Court yesterday upheld the conviction of Anthony J. Gardiner, 23, on charges that he terrorized a Warwick woman in 1989 in an attempt to keep her from testifying against him in another case.

Gardiner, who was convicted in 1990 on five counts of assault agains[redacted] with a dangerous weapon and one count of intimidating a witness, is serving a 15-year prison term at the Adult Correctional Institutions.

[redacted] identified Gardiner as one of four men who hit her on the head with a pipe on the night of Sept. 6, 1989, and then dragged her into the woods behind her apartment at 35 Lake St., Warwick, where she was bound with duct tape.

One of the attackers slashed her tongue with a long knife and also cut her stomach.

Three months before the attack, [redacted] saw Gardiner spray her apartment with gunfire, narrowly missing several occupants who had to dive for cover, and intended to testify at his trial on charges related to the incident.

On appeal, Gardiner argued that Superior Court Judge John F. Sheehan, who tried the case, abused his discretion by refusing to permit an expert witness to testify for the defense about eyewitness identification, improperly denied a defense motion to suppress [redacted] in-court and out-of-court identification and erred in denying numerous other motions.

The Supreme Court disagreed.

Also charged in the attack on [redacted] were Frederick M. Heon Jr., Edward Kollett and Richard T. Fines, all of Warwick.

Heon, who sexually assaulted [redacted] after she had been dragged into the woods, is serving a 15-year prison term. Kollett was sentenced to 10 years in prison and Fines received a 5-year suspended sentence.

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January 31, 1994
Supreme Court
No. 91-626-C.A.
(K1/89-0700A)

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State :
v. :
Anthony J. Gardiner. :

O P I N I O N

MURRAY, J. This case came before this court on the appeal of the defendant, Anthony J. Gardiner (Gardiner), from a Superior Court judgment of conviction on five counts of assault with a dangerous weapon and one count of witness intimidation. In 1990 the trial justice denied the defendant's motion for a new trial and sentenced him to a total of fifteen years in the Adult Correctional Institutions. On appeal the defendant seeks to have this court vacate his conviction and remand to the Superior Court for a new trial. We affirm.

The record of this case is voluminous -- nine volumes containing a total of 1,739 numbered pages. Hence, we relate only that précis of relevant facts pertinent to the issues raised on appeal.

It is undisputed that on the night of September 6, 1989, [redacted] suffered a brutal attack that multiple perpetrators committed. In her testimony, [redacted] referred to four male assailants, one black and three white.

Clad in a pink sweatsuit, [redacted] was doing her laundry on the bottom floor of her residence at 35 Lake Street in Warwick when she

heard what she thought was her cat crying outside. She checked outside the apartment building twice to see what was happening and to let the cat in, but the crying stopped both times she went out the door. A few minutes later, [redacted] heard the crying a third time and stepped outside to investigate.

Suddenly someone on her right side struck her in the head with an object. Two attackers grabbed her, one from each side, and someone slapped tape over her mouth. They shoved her and kneed her in the back, directing her through the grassy yard behind the apartment building and into the woods. [redacted] struggled, dragging her feet and trying to halt the movement toward the woods. As they moved across the yard, she noticed that a white arm was holding her on her right side and a dark arm was holding her left side. She heard the attacker to her left, a black man whom she later identified as Gardiner, say such things as "knock her out" and something about shutting her up.

As they crossed the yard, her attackers hit her on the head and the back with the same object with which they had initially struck her, which object she described as a pipe. As they approached the woods, she saw Richard Fines (Fines) facing her, a man whom she knew well; she thought he was a friend there to help her. Before they reached the edge of the woods, the white-armed man used a long knife to slice her abdomen. Fines turned around and walked into the woods and her two attackers pushed her into the woods behind him.

There, they tried to tape her hands together, but she freed her left arm from Gardiner's grip and grabbed the tape from the white-armed man to throw it. [redacted] and the attackers who flanked her struggled

for the tape. She did not know where Fines was at that point. [redacted] managed to sit on the tape, but the man on her right grabbed and held her while Gardiner taped her wrists together behind her back. During the struggle over the tape, [redacted] was able to see the faces of both men. [redacted] testified that, when she was lying on her side on the ground as Gardiner taped her arms behind her back, she saw his face for "a few seconds * * * the most thirty seconds." Part of that time, she was located at most a foot away from him.

After her arms were taped, her attackers brought her to her feet and pushed, dragged, and hit her as they had before, directing her deeper into the woods. [redacted] further testified that they told her that this would shut her up. At some point much farther into the woods they stopped, and a third assailant taped her feet together. She recognized the man who taped her feet as Frederick Heon (Heon), although he was not a friend as Fines was.

[redacted] testified that Gardiner held her down while her feet were being taped and then looked directly at her and said, "I'm going to shut you up, you fucking bitch." She attempted to roll away, but Fines kicked her back, and Gardiner said that he wanted her tongue out. One of the other assailants responded that he was "not going to jail because of this cunt." Then the assailant on her right removed the tape from her mouth and tried to pull out her tongue, whereupon she pulled away and bit him. Someone smacked her in the cheek with the pipe, and one assailant held her tongue while another sliced it, using the same knife with which he had cut her abdomen. When [redacted] tried to pull her head away, he sliced her face also. Meanwhile, Gardiner

was still holding her down.

They retaped her mouth and continued hitting her; Gardiner kept urging them to "knock her out." Blood ran down her throat, choking her and making her feel ill and have difficulty breathing. The man to her right then sliced open her shirt and bra, cut her chest, and incised an X across her nipple while Gardiner held her down. Another assailant then bit her nipple and shook his head while doing so. Gardiner held down her legs while the assailant with the knife cut her pants and, she believed, her underwear. Gardiner said something to the effect of "If this doesn't shut you up I'm going to get those little bastard kids." Gardiner was near her feet when another assailant inserted a finger inside her vagina. [redacted] testified that she was screaming to whatever extent she could with the tape covering her mouth. When she heard a woman's voice from a distance, her attackers started to flee. She heard the men say "Where's Frankie?" and "Over there." Then someone asked, "What did you do with it?" and someone said, "I threw it." She testified that during the course of the attack, she heard the names Ray or Jay and Rick, and she vaguely recalled hearing Tony.

Some residents of and visitors to Lake Street that night responded to what some thought were the sounds of a crying animal or cats fighting. They went into the woods and found [redacted] lying on her side, moaning, with her mouth taped shut and her feet and arms bound by tape. Someone called the police, and [redacted] was taken to Kent County Memorial Hospital in an ambulance and treated and released.

A grand jury investigated and ultimately charged defendant and three other men, Heon, Fines, and Edward Kollett (Kollett), in

connection with this incident. All four were charged with five counts of assault with a dangerous weapon, one count of witness intimidation, one count of assault resulting in serious bodily injury, one count of assault with intent to murder, one count of kidnapping, and one count of assault and battery. Additionally Heon was charged with first-degree sexual assault for engaging in sexual penetration of [redacted] Gardiner, Kollett, and Fines were charged with aiding and abetting Heon in the commission of that offense. Prior to trial, the state dismissed the charges of assault and battery and assault with intent to murder pursuant to Rule 48(a) of the Superior Court Rules of Criminal Procedure. The trial justice granted defendant's motion to sever his trial from that of his codefendants.

The defendant's trial then took place over several days. The trial justice granted defendant's motion for judgment of acquittal on the kidnapping charge. Subsequently, the jury convicted defendant of the five counts of assault with a dangerous weapon and witness intimidation; the jury acquitted him of assault resulting in serious bodily injury and aiding and abetting first-degree sexual assault.

On appeal, defendant alleges three areas of error in the trial record. He claims that (1) the trial justice abused his discretion by refusing to permit an expert witness to testify on behalf of defendant regarding eyewitness identification; (2) the trial justice erred by denying defendant's motion to suppress [redacted] in-court and out-of-court identifications; and (3) the trial justice erred by denying defendant's numerous motions to pass the case.

STATE OF RHODE ISLAND
KENT, SC.

SUPERIOR COURT

STATE OF RHODE ISLAND

VS.

K1/89-700A

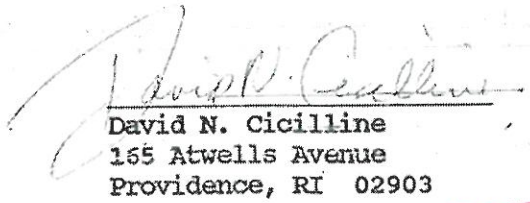
ANTHONY GARDINER

MSU

MOTION TO SUPRESS STATEMENTS

Now comes the defendant in the above entitled cause and moves to suppress any and all statements alleged to have been made and for reason says that they were procured in violation of rights secured to the defendant by Article 1, Sections 10 and 13 of the Rhode Island Constitution and by the Fifth and Sixth Amendments to the United States Constitution, and in violation of the protections of Miranda v. Arizona, 384 U.S. 436 (1966).

Respectfully submitted
Anthony Gardiner
By his attorney,



David N. Cicilline
155 Atwells Avenue
Providence, RI 02903

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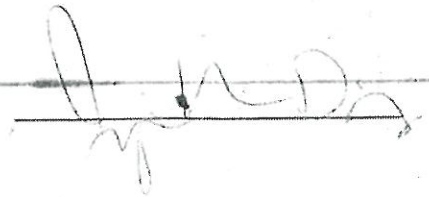
DATED: November 6, 1989

CERTIFICATION

I, the undersigned, hereby certify that I caused to be delivered a true copy of the within this 6th day of November, 1989, to the Office of the Attorney General, 222 Quaker Lane, W. Warwick, RI 02893.