

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Deberry

441 Mass. 211 (2004) · Decided March 12, 2004

SUMMARY

The Massachusetts Supreme Judicial Court held that, when only a repairable portion of property is damaged, the value for purposes of distinguishing felony from misdemeanor malicious destruction under G. L. c. 266, § 127, is measured by the reasonable cost of repair rather than the value of the entire property or an isolated component. Because the Commonwealth presented no evidence of the repair cost for the hole in the wall, the felony conviction was reversed and the lesser-included misdemeanor conviction ordered to enter. The court affirmed the defendant’s two other misdemeanor convictions and upheld the admission of prior convictions for impeachment.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Marshall, C.J.
JURISDICTION	Massachusetts
DECIDED	March 12, 2004
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The defendant appealed from District Court convictions for assault and battery and malicious destruction of property. The Appeals Court affirmed, and the Massachusetts Supreme Judicial Court granted further appellate review.
STANDARD OF REVIEW	The court reviewed the sufficiency of the evidence in the light most favorable to the Commonwealth and reviewed the trial judge's admission of prior-conviction evidence for abuse of discretion.
PRECEDENTIAL VALUE	Published precedential opinion of the Massachusetts Supreme Judicial Court.
PARTIES	Deberry v. Commonwealth

TOPICS

- statutory interpretation
- rule of lenity
- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. When only a portion of real property is damaged and the damage is repairable, whether the statutory phrase "value of the property so destroyed or injured" under G. L. c. 266, § 127, is measured by the value of the entire property, the value of the damaged portion, or the reasonable cost of repair.
2. Whether the Commonwealth proved beyond a reasonable doubt the value element necessary to sustain the felony conviction.
3. Whether the trial judge abused her discretion by admitting the defendant's prior convictions for impeachment despite their similarity to the charged assault and battery offense.
4. Whether the defendant's right to testify includes a right to testify free from impeachment by prior convictions.

HOLDINGS

1. Where repairable damage is caused to a portion of a larger property, the value of the property destroyed or injured is measured by the reasonable cost of repairs necessitated by the malicious conduct, rather than the value of the entire property or an arbitrarily segmented component.
2. Because the Commonwealth presented no evidence of the reasonable cost to repair the wall, it failed to prove beyond a reasonable doubt the value element necessary for the felony conviction.
3. The trial judge did not abuse her discretion by denying the motion to exclude the defendant's prior convictions for impeachment.
4. A defendant has a right to testify but does not have a right to testify free from the effects of impeachment by prior conviction.

KEY QUOTATIONS

"Where repairable damage or destruction is caused to a portion or portions of a greater whole, the value of the property damaged or destroyed is to be measured by the reasonable cost of the repairs necessitated by the malicious conduct." (441 Mass. at 221-222)

"The defendant has a right to testify. He does not have a right to testify free of the effects of impeachment by prior conviction." (441 Mass. at 225)

FACTUAL BACKGROUND

During an argument, the defendant ripped a kitchen telephone from a wall, broke it, punched a hole in the kitchen wall, broke a cordless telephone, and broke a pager. The Commonwealth presented evidence concerning the value of the telephones and pager but offered no evidence concerning the value of the wall or house, the cost to repair the wall, or the pecuniary loss caused by the wall damage. The trial judge instructed the jury to determine the value of the wall or property rather than the value of the damage.

PROCEDURAL HISTORY

After a jury trial in Brockton District Court, the defendant was acquitted of assault and battery and convicted of three counts of malicious destruction of property, including one felony count involving property valued over \$250 and two misdemeanor counts. The defendant appealed, and the Appeals Court affirmed the convictions. The Supreme Judicial Court granted further appellate review, reversed the felony conviction, affirmed the misdemeanor convictions, and remanded for entry of a finding of guilt on the lesser included misdemeanor offense.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment on the felony conviction is reversed and the verdict set aside. The case is remanded to the District Court for entry of a finding of guilty on the lesser included offense of malicious destruction of property under \$250 and sentencing under the misdemeanor provisions of G. L. c. 266, § 127. The two misdemeanor convictions are affirmed.

CASES CITED

- Commonwealth v. Latimore, 378 Mass. 671, 676-677 (1979)
- Commonwealth v. Beale, 434 Mass. 1024, 1025 (2001)
- Hanlon v. Rollins, 286 Mass. 444, 447 (1934)
- Boston Police Patrolmen's Ass'n v. Boston, 435 Mass. 718, 719-720 (2002)
- Chandler v. County Comm'rs of Nantucket County, 437 Mass. 430, 435 (2002)
- EMC Corp. v. Commissioner of Revenue, 433 Mass. 568, 570-571 & nn.6-8 (2001)
- Barclay v. De-Veau, 384 Mass. 676, 680 (1981)
- Commonwealth v. Roucoulet, 413 Mass. 647, 652 (1992)
- State v. Breznick, 134 Vt. 261, 266 (1976)
- Commonwealth v. Walden, 3 Cush. 558, 559-560 (1849)
- Nichols v. United States, 343 A.2d 336, 341-342 (D.C. 1975)
- Commonwealth v. Cox, 7 Allen 577, 578 (1863)
- Commonwealth v. Pauling, 438 Mass. 1, 12 (2002)
- Commonwealth v. Leftwich, 430 Mass. 865, 869 (2000)
- Commonwealth v. Schuchardt, 408 Mass. 347, 351-352 (1990)
- Commonwealth v. Ruddock, 25 Mass. App. Ct. 508, 512 (1988)
- Commonwealth v. Peruzzi, 15 Mass. App. Ct. 437, 439 (1983)
- Commonwealth v. Walters, 12 Mass. App. Ct. 389, 394 n.4 (1981)
- Commonwealth v. Cimino, 34 Mass. App. Ct. 925, 927-928 (1993)
- Commonwealth v. Pyburn, 26 Mass. App. Ct. 967, 968-969 (1979)
- Commonwealth v. Deberry, 57 Mass. App. Ct. 93, 96-99 (2003)

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