

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. Murphy

442 Mass. 485 (2004) · Decided August 19, 2004

SUMMARY

The Supreme Judicial Court of Massachusetts reviewed convictions for two counts of murder in the first degree and armed assault in a dwelling, along with the denial of a motion for a new trial. The court rejected challenges concerning Miranda custody and waiver, loss of potentially exculpatory evidence, prosecutorial closing argument, jury instructions, ineffective assistance of counsel, and conflicts of interest. It affirmed the convictions and the order denying a new trial and declined to grant relief under G. L. c. 278, § 33E.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Cowin, J.
JURISDICTION	Massachusetts
DECIDED	August 19, 2004
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed from convictions after a jury trial for two counts of murder in the first degree and armed assault in a dwelling, and from the denial of his motion for a new trial.
STANDARD OF REVIEW	Subsidiary findings on a motion to suppress are accepted absent clear error, while the application of constitutional principles to those facts is reviewed independently. The loss-of-evidence ruling is reviewed for clear abuse of discretion. Unpreserved claims are reviewed for a substantial likelihood of a miscarriage of justice. Denial of a motion for a new trial and denial of funds for experts are reviewed for abuse of discretion or error of law, with special deference to the trial judge.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Murphy v. Commonwealth

TOPICS

- criminal procedure
- miranda rights
- suppression of evidence
- evidence
- post-conviction relief

PRACTICE AREAS

criminal law

criminal procedure

constitutional law

evidence

post-conviction relief

QUESTIONS PRESENTED

1. Whether the defendant was in custody during the pre-Miranda questioning at the police station.
2. Whether the defendant knowingly, intelligently, and voluntarily waived his Miranda rights and whether his post-warning statements were voluntary.
3. Whether the Commonwealth's negligent loss of a potentially exculpatory footwear impression required exclusion of the remaining footwear-impression evidence.
4. Whether the prosecutor's reference to the killings as being committed in cold blood created a substantial likelihood of a miscarriage of justice.
5. Whether the jury instructions improperly permitted armed assault in a dwelling to serve as the predicate felony for felony murder, shifted the burden regarding alibi, or improperly defined the second prong of malice.
6. Whether trial counsel was ineffective for failing to pursue additional mental-health testing, for an alleged conflict of interest, for allegedly preventing the defendant from testifying, or for failing to object to jury instructions.
7. Whether the trial judge abused her discretion by declining to hold a broader evidentiary hearing on the new-trial claims.
8. Whether the defendant was entitled to public funds for additional mental-health experts in connection with his motion for a new trial.
9. Whether relief should be granted under G. L. c. 278, § 33E.

HOLDINGS

1. The defendant was not in custody during the initial 12:15 to 12:45 p.m. interview, so Miranda warnings were not required before that questioning.
2. The defendant knowingly, intelligently, and voluntarily waived his Miranda rights, and his statements made before the suppressed 11 p.m. statements were voluntary.
3. The trial judge properly denied the motion to exclude the footwear-impression evidence because the defendant failed to establish a reasonable possibility that the lost impression would have produced favorable, material evidence.
4. Armed assault in a dwelling with intent to commit a felony could serve as the predicate felony for felony murder because the assaults were independent of the fatal stabbings.
5. The alibi instruction, considered as a whole, did not improperly shift the burden of proof to the defendant.
6. The erroneous instruction permitting second-prong malice to support deliberately premeditated murder did not create a substantial likelihood of a miscarriage of justice.

7. Counsel was not ineffective for failing to obtain additional neurological testing or pursue a mental-health defense.
8. The defendant did not establish ineffective assistance based on counsel's prior representation of a witness, alleged denial of the right to testify, or failure to object to the challenged instructions.
9. The trial judge properly denied the defendant's motions for funds for additional mental-health experts because he failed to show a likelihood that the expenditure would produce a meritorious new-trial ground.

KEY QUOTATIONS

"The critical question in making the custody determination is 'whether, considering all the circumstances, a reasonable person in the defendant's position would have believed that he was in custody.'" (492)

"A defendant who seeks relief from the loss or destruction of potentially exculpatory evidence has the initial burden ... to establish 'a "reasonable possibility," based on concrete evidence rather than a fertile imagination,' that access to the [evidence] would have produced evidence favorable to his cause.'" (495)

"Defense counsel considered and investigated the defendant's mental condition and reasonably concluded that . . . such a defense was not viable.'" (503)

FACTUAL BACKGROUND

The victims, an elderly woman and her brother, were found stabbed to death in their Lynn home. The defendant, who lived with the victims' next-door neighbors, voluntarily went with the neighbors to the police station after police canvassed the area. Police later noticed that his sneakers resembled a bloody footwear impression from the murder scene, obtained his consent to seize the sneakers, administered Miranda warnings, and questioned him; he made incriminating statements after the warnings. The Commonwealth also lost a second footwear impression through negligence, while the defense pursued and then abandoned mental-health and intoxication theories in favor of an alibi defense at the defendant's direction.

PROCEDURAL HISTORY

A jury convicted the defendant of two counts of first-degree murder and armed assault in a dwelling. The trial judge denied the defendant's motion for a new trial and denied motions for funds to retain additional mental-health experts. The Supreme Judicial Court reviewed the convictions, the new-trial ruling, the funding rulings, and the request for relief under G. L. c. 278, § 33E.

DISPOSITION

affirmed

CASES CITED

- *Miranda v. Arizona*, 384 U.S. 436 (1966)
- *Commonwealth v. Sneed*, 440 Mass. 216, 220 (2003)

- Commonwealth v. Brum, 438 Mass. 103, 111 (2002)
- Commonwealth v. Hosey, 368 Mass. 571, 577-579 (1975)
- Commonwealth v. Jackson, 432 Mass. 82, 85 (2000)
- Commonwealth v. Olszewski, 401 Mass. 749, 754 (1988), S.C., 416 Mass. 707 (1993), cert. denied, 513 U.S. 835 (1994)
- Commonwealth v. Charles, 397 Mass. 1, 14 (1986)
- Commonwealth v. Otsuki, 411 Mass. 218, 231 (1991)
- Commonwealth v. Dinkins, 440 Mass. 715, 717 (2004)
- Commonwealth v. Cintron, 438 Mass. 779, 784 (2003)
- Commonwealth v. Willie, 400 Mass. 427, 433 (1987)
- Commonwealth v. Johnson, 429 Mass. 745, 748 (1999)
- Commonwealth v. Rodriguez, 437 Mass. 554, 565 (2002)
- Commonwealth v. Wright, 411 Mass. 678, 681-682 (1992)
- Commonwealth v. Gunter, 427 Mass. 259, 274-275 & n.15 (1998)
- Commonwealth v. Kilburn, 438 Mass. 356, 359 (2003)
- Commonwealth v. McLeod, 367 Mass. 500, 502 n.1 (1975)
- Commonwealth v. Jenks, 426 Mass. 582, 585 (1998)
- Commonwealth v. Diaz, 426 Mass. 548, 553-554 (1998)
- Commonwealth v. Simpson, 434 Mass. 570, 588 (2001)
- Commonwealth v. Federici, 427 Mass. 740, 744-745 (1998)
- Commonwealth v. Coonan, 428 Mass. 823, 827 (1999)
- Commonwealth v. Martin, 427 Mass. 816, 822 (1998)
- Commonwealth v. Parker, 420 Mass. 242, 245 n.3 (1995)
- Commonwealth v. Hardy, 426 Mass. 725, 729 n.5 (1998)
- Commonwealth v. Sires, 413 Mass. 292, 299 n.7 (1992)
- Commonwealth v. Randolph, 438 Mass. 290, 302-303 (2002)
- Commonwealth v. Roberio, 428 Mass. 278 (1998)
- Commonwealth v. Haggerty, 400 Mass. 437, 439-442 (1987)
- Commonwealth v. Grace, 397 Mass. 303, 307 (1986)
- Commonwealth v. Banister, 428 Mass. 211, 216 (1998)
- Commonwealth v. Gill, 37 Mass. App. Ct. 457, 468-469 (1994)
- Commonwealth v. Hallet, 427 Mass. 552, 554-555 (1998)
- Commonwealth v. Dykens, 438 Mass. 827, 839 (2003)
- Commonwealth v. Carter, 429 Mass. 266, 270 (1999)
- Commonwealth v. Licata, 412 Mass. 654, 660 (1992)
- Commonwealth v. DeVincent, 421 Mass. 64, 69 (1995)
- Commonwealth v. Stewart, 383 Mass. 253, 257-258 (1981)

- Commonwealth v. Britto, 433 Mass. 596, 608 (2001)

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