

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Sullivan

Sullivan · No. SJC-13353 · Decided May 16, 2023

SUMMARY

The Massachusetts Supreme Judicial Court held that indictments charging Joseph Sullivan and Derrick Gentry-Mitchell with misleading investigators did not violate art. 12 of the Massachusetts Declaration of Rights. Although the indictments alleged multiple misleading statements made at different times, the statements concerned the same underlying assault and constituted a continuing course of conduct arising from a single intent or general scheme. The court vacated the Superior Court judge’s order dismissing the indictments.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                    |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Massachusetts Supreme Judicial Court                                                                                                                                                                                                                                               |
| WRITING FOR THE COURT | Wendlandt, J.; Budd, C.J.; Gaziano, J.; Lowy, J.; Cypher, J.; Kafker, J.; Georges, J.                                                                                                                                                                                              |
| JURISDICTION          | Massachusetts                                                                                                                                                                                                                                                                      |
| DECIDED               | May 16, 2023                                                                                                                                                                                                                                                                       |
| DOCKET                | SJC-13353                                                                                                                                                                                                                                                                          |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | The Commonwealth appealed from an order of the Superior Court Department dismissing indictments charging Joseph Sullivan and Derrick Gentry-Mitchell with misleading investigators. The Supreme Judicial Court transferred the cases from the Appeals Court on its own initiative. |
| STANDARD OF REVIEW    | De novo review of legal determinations on motions to dismiss.                                                                                                                                                                                                                      |
| PRECEDENTIAL VALUE    | published precedential opinion of the Massachusetts Supreme Judicial Court                                                                                                                                                                                                         |
| PARTIES               | Commonwealth v. Joseph Sullivan                                                                                                                                                                                                                                                    |

TOPICS

- grand jury
- criminal procedure
- constitutional law
- statutory interpretation
- double jeopardy

## PRACTICE AREAS

criminal procedure

constitutional law

grand jury practice

statutory interpretation

## QUESTIONS PRESENTED

1. Whether indictments charging a single count of misleading investigators based on multiple misleading statements made on different dates to different investigators violated art. 12 of the Massachusetts Declaration of Rights.
2. Whether the alleged statements constituted unrelated separate acts requiring separate indictments, or instead were part of a single continuing criminal impulse, intent, or general scheme to conceal the same underlying event.

## HOLDINGS

1. An indictment charging one count of misleading investigators does not violate art. 12 where the alleged statements, although made at different times to different investigators, constituted a continuing course of conduct actuated by a single, continuing criminal impulse or intent or undertaken pursuant to a general scheme to conceal the same underlying event.
2. The use of different investigators and the disjunctive listing of dates did not violate art. 12 because the essential crime charged was the defendants' continuing effort to mislead investigators concerning the April 2015 assault, and the dates were not essential elements of the offense.

## KEY QUOTATIONS

*“Because the indictments charge the essential crime of willfully misleading investigators to impede the investigation of the same underlying event -- the off-duty police officers' alleged assault of the victim -- and because the misleading statements constituted a continuing course of conduct actuated by a single, continuing impulse or intent, or general scheme to conceal that event, we conclude that the indictments do not violate art. 12.” (at 3)*

*“We have long construed art. 12 to require “that no one may be convicted of a crime punishable by a term in the State prison without first being indicted for that crime by a grand jury.”” (at 12)*

*“Although each misleading statement could form a separate charge for misleading investigators, the Commonwealth is not precluded by art. 12 from proceeding under one indictment, charging the essential crime of willfully misleading investigators to cover up the off-duty SPD officers' role in the assault on the victims on April 2015.” (at 22)*

## FACTUAL BACKGROUND

The Commonwealth alleged that off-duty Springfield police officers assaulted four Black men near Nathan Bill's Bar & Restaurant in April 2015. It further alleged that Joseph Sullivan, a co-owner of the bar, and Springfield police officer Derrick Gentry-Mitchell made false or misleading statements to local, state, and federal investigators and to a grand jury to conceal the officers' involvement in the assault. The statements were made on multiple dates between 2015 and 2018, and the grand jury returned one count of misleading investigators against each defendant based on the alleged continuing cover-up.

## PROCEDURAL HISTORY

A Hampden County grand jury returned indictments in 2019. The defendants moved to dismiss the misleading-investigators indictments under art. 12 of the Massachusetts Declaration of Rights, arguing that a single count improperly aggregated multiple statements made to different investigators over several years. After a nonevidentiary hearing, the Superior Court allowed the motions to dismiss. The Supreme Judicial Court reversed and remanded.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Reverse the order allowing the defendants' motions to dismiss the misleading-investigators indictments and remand for further proceedings.

## CASES CITED

- Commonwealth v. Stirlacci, 483 Mass. 775 (2020)
- Commonwealth v. Ilya I., 470 Mass. 625 (2015)
- Commonwealth v. Barbosa, 421 Mass. 547 (1995)
- Jones v. Robbins, 8 Gray 329 (1857)
- Commonwealth v. Smith, 459 Mass. 538 (2011)
- Commonwealth v. Dean, 109 Mass. 349 (1872)
- Campagna v. Commonwealth, 454 Mass. 1006 (2009)
- Commonwealth v. Conefrey, 420 Mass. 508 (1995)
- Commonwealth v. Comtois, 399 Mass. 668 (1987)
- Commonwealth v. Runge, 231 Mass. 598 (1919)
- Commonwealth v. Peretz, 212 Mass. 253 (1912)
- Wells v. Commonwealth, 12 Gray 326 (1859)
- Commonwealth v. Megna, 59 Mass. App. Ct. 511 (2003)
- Commonwealth v. Smiley, 431 Mass. 477 (2000)
- Commonwealth v. Crowder, 49 Mass. App. Ct. 720 (2000)
- Commonwealth v. Lee, 149 Mass. 179 (1889)
- Commonwealth v. Dingle, 73 Mass. App. Ct. 274 (2008)
- Commonwealth v. Rollins, 470 Mass. 66 (2014)
- Stirone v. United States, 361 U.S. 212 (1960)

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