

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. Snow

456 Mass. 1019 (2010) · Decided April 20, 2010

SUMMARY

The Supreme Judicial Court of Massachusetts affirmed the denial of the Commonwealth’s petition under G. L. c. 211, § 3, seeking relief from an order permitting civilian witnesses to testify at an evidentiary hearing on alleged grand jury misconduct. The court held that the Commonwealth had not shown the exceptional circumstances, substantial claim, or irremediable error required for interlocutory review under the court’s extraordinary superintendence power.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
JURISDICTION	Massachusetts
DECIDED	April 20, 2010
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Commonwealth appealed from a single justice's judgment denying its petition under G. L. c. 211, § 3, which sought relief from a Superior Court judge's order permitting civilian witnesses to testify at an evidentiary hearing on the defendants' motions to dismiss murder indictments.
STANDARD OF REVIEW	General superintendence review under G. L. c. 211, § 3, is extraordinary and interlocutory review in a criminal case requires a substantial claim of irremediable error, exceptional circumstances, and a need to protect substantive rights. The single justice's denial of relief is reviewed for abuse of discretion or other error.
PRECEDENTIAL VALUE	Published opinion; binding Massachusetts Supreme Judicial Court authority on the stated limits of G. L. c. 211, § 3, interlocutory review.
PARTIES	Commonwealth v. Eric Snow, James Winquist

TOPICS

- appellate procedure
- interlocutory appeal
- criminal procedure
- prosecutorial misconduct
- evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Commonwealth could obtain interlocutory review under G. L. c. 211, § 3, of the Superior Court judge's discretionary order permitting civilian witnesses to testify at the evidentiary hearing.
2. Whether the asserted lack of a preliminary showing of grand-jury misconduct, witness-safety concerns, and the burden of repeated testimony constituted exceptional circumstances or threatened a substantive right warranting extraordinary supervisory relief.
3. Whether the single justice abused her discretion by denying the Commonwealth's G. L. c. 211, § 3, petition.

HOLDINGS

1. The Commonwealth's lack of another remedy does not make review under G. L. c. 211, § 3, automatic.
2. The Superior Court's rulings allowing the evidentiary hearing and permitting the civilian witnesses to testify were routine discretionary rulings that did not present the exceptional circumstances or threatened substantive rights necessary for G. L. c. 211, § 3, relief.

KEY QUOTATIONS

“The fact that the Commonwealth has no other remedy does not make [G. L.] c. 211, § 3, review automatic.”
(456 Mass. at 1019)

“We will review interlocutory matters in criminal cases only when ‘substantial claims’ of ‘irremediable’ error are presented . . . and only in ‘exceptional circumstances,’ . . . where ‘it becomes necessary to protect substantive rights’” (456 Mass. at 1019)

FACTUAL BACKGROUND

Snow and Winquist were indicted in September 2007 for the murders of two men whose bodies were found in a park in Hingham. They alleged that the Commonwealth presented misleading evidence, withheld exculpatory evidence, and knowingly presented false grand-jury testimony. During the resulting evidentiary hearing, the Superior Court judge first allowed testimony from law enforcement witnesses and later permitted four civilian witnesses to testify as well, prompting the Commonwealth's supervisory petition.

PROCEDURAL HISTORY

Snow and Winquist were indicted for murder. They moved to dismiss the indictments based on alleged prosecutorial misconduct before the grand jury and sought an evidentiary hearing. The Superior Court allowed the hearing and ultimately permitted four civilian witnesses, in addition to law enforcement witnesses, to testify. The Commonwealth petitioned under G. L. c. 211, § 3; a single justice denied the petition, and the Supreme Judicial Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. O'Dell, 392 Mass. 445 (1984)
- Commonwealth v. Salman, 387 Mass. 160, 166 (1982)
- Commonwealth v. Richardson, 454 Mass. 1005, 1005-1006 (2009)
- Commonwealth v. Cook, 380 Mass. 314, 319-320 (1980)
- Barber v. Commonwealth, 353 Mass. 236, 239 (1967)
- Commonwealth v. Narea, 454 Mass. 1003, 1004 n.1 (2009)

OPINION

PER CURIAM.

The Commonwealth appeals from a judgment of a single justice of this court denying its petition pursuant to G. L. c. 211, § 3. We affirm.

Eric Snow and James Winkvist were indicted for murder, in September, 2007, in connection with the deaths of two men whose bodies were discovered in a park in Hingham. In December, 2008, Snow filed a motion to dismiss the indictments, which Winkvist later joined, arguing prosecutorial misconduct during the course of the grand jury proceedings. The defendants argued that the Commonwealth's presentation of evidence to the grand jury was misleading and that the Commonwealth withheld exculpatory evidence, in violation of Commonwealth v. O'Dell, 392 Mass. 445 (1984); and that the Commonwealth knowingly presented false testimony, in violation of Commonwealth v. Salman, 387 Mass. 160 (1982).

The defendants also sought an evidentiary hearing on the motion to dismiss. A judge in the Superior Court allowed the request for a hearing, over the Commonwealth's objection. The defendants stated their intent to call six law enforcement officers — four police officers and two parole officers ■— and four civilians as witnesses at the hearing. Initially, the judge indicated that the defendants could call the law enforcement officers, and he reserved for later a decision as to whether they could also call the civilian witnesses. After the law enforcement witnesses testified, and after further consideration, the judge ruled that he would also allow the four civilian witnesses to testify. The Commonwealth then filed a G. L. c. 211, § 3, petition, seeking relief from the judge's order allowing the testimony of the civilian witnesses. A single justice denied the petition.

In its appeal from the judgment entered by the single justice, the Commonwealth argues that G. L. c. 211, § 3, provides the only means by which it can seek review of the judge's decision. That, however, is not dispositive of the question whether the use of G. L. c. 211, § 3, was appropriate in these circumstances. "The fact that the Commonwealth has no other remedy does not make [G. L.] c. 211, § 3, review automatic." Commonwealth v. Richardson, 454 Mass. 1005, 1005 (2009), quoting Commonwealth v. Cook, 380 Mass. 314, 319 (1980). "We will review interlocutory

matters in criminal cases only when ‘substantial claims’ of ‘irremediable’ error are presented... and only in ‘exceptional circumstances,’... where ‘it becomes necessary to protect substantive rights’ ” (citations omitted). *Commonwealth v. Cook*, *1020supra at 320, quoting *Barber v. Commonwealth*, 353 Mass. 236, 239 (1967). We recently reiterated in *Commonwealth v. Richardson*, supra, that “[n]o party, including the Commonwealth, should expect this court to exercise its extraordinary power of general superintendence lightly.” *Id.* at 1006. See *Commonwealth v. Narea*, 454 Mass. 1003, 1004 n.1 (2009).

John E. Bradley, Assistant District Attorney (Suzanne D. McDonough, Assistant District Attorney, with him) for the Commonwealth.

Stephen Neyman for James Winkist.

Robert S. Sinsheimer for Eric Snow.

The Commonwealth argues that the judge erred in allowing the defendants’ request for an evidentiary hearing because the defendants have not made the requisite preliminary showing that false testimony was presented to, or that exculpatory evidence was withheld from, the grand jury. See *Commonwealth v. Salman*, supra at 166. It also expresses a concern for the safety of the civilian witnesses, two of whom, according to the Commonwealth, have been relocated through the Commonwealth’s witness protection program. Additionally, one of those witnesses is, according to the Commonwealth, the victim of a related crime for which Snow has been indicted — intimidating a witness. These interests regarding witness safety, “as important as they are, do not always give rise to the type of ‘exceptional circumstances’ that warrant the exercise of this court’s supervisory powers.” *Commonwealth v. Richardson*, supra at 1006. While it is also true, as the Commonwealth states, that the witnesses might not wish to have to appear in court to testify against the defendants on more than one occasion (at the evidentiary hearing and at trial), this is not a “substantive right” that warrants the exercise of this court’s extraordinary power of general superintendence pursuant to G. L. c. 211, § 3.

The Superior Court judge’s rulings — to allow the defendants’ motion for an evidentiary hearing; to allow the defendants initially to call only law enforcement officers as witnesses; and, after those witnesses had testified, and upon further consideration, to allow the civilian witnesses to testify as well — were the type of routine, discretionary rulings made by judges in criminal cases throughout the Commonwealth daily. The single justice determined that in making these garden-variety rulings, the judge had not abused his discretion. Nothing in the Commonwealth’s arguments before this court demonstrates that the single justice, in turn, abused her discretion or otherwise erred in denying the Commonwealth’s G. L. c. 211, § 3, petition.²

Judgment affirmed.

The Commonwealth contends that motions to dismiss indictments pursuant to *Commonwealth v. O’Dell*, 392 Mass. 445 (1984), have become routine in the Superior Court; often do not have a legitimate basis; and clog up the criminal justice system. The Commonwealth thus attempts to

portray this as a systemic issue appropriate for consideration under G. L. c. 211, § 3. See *Commonwealth v. Richardson*, 454 Mass. 1005, 1006 (2009). The Commonwealth, however, provides no record support at all for this proposition.

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