

MASSACHUSETTS APPEALS COURT

Commonwealth v. Donahue

6 Mass. App. Ct. 971 (1979) · Decided January 17, 1979

SUMMARY

The Massachusetts Appeals Court affirmed the denial of the defendant’s fourth motion for a new trial following his conviction for receiving stolen property. The court held that the motion judge properly rejected an alleged recantation and that the defendant failed to establish that evidence concerning promises or inducements to the principal witness was newly discovered.

CASE DETAILS

COURT	Massachusetts Appeals Court
JURISDICTION	Massachusetts
DECIDED	January 17, 1979
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed from an order denying his fourth motion for a new trial following his conviction for receiving stolen property.
STANDARD OF REVIEW	The appellate court upheld the motion judge's factual determinations, including the credibility determination rejecting the witness's recantation and the choice to credit the prosecuting attorney's denial of promises. The defendant bore the burden of establishing that the supporting evidence was newly discovered.
PRECEDENTIAL VALUE	Published Massachusetts Appeals Court opinion
PARTIES	Defendant v. Commonwealth

TOPICS

- post-conviction relief
- criminal procedure
- evidence
- appellate procedure
- standard of review

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- evidence
- appellate procedure

QUESTIONS PRESENTED

- Whether the defendant was entitled to a new trial because the principal witness allegedly recanted his trial testimony.

2. Whether the defendant was entitled to a new trial based on alleged promises or inducements made to the principal witness by police officers or the prosecution.
3. Whether a new trial was required as a matter of law because the judge deciding the fourth motion was not the judge who presided over the trial.

HOLDINGS

1. The defendant was not entitled to a new trial based on Fernald's alleged recantation because the motion judge found that Fernald was not telling the truth, and that credibility determination removed the factual basis for the claim.
2. A new trial was not required merely because the judge deciding the motion was not the judge who presided over the trial, particularly where the motion judge had read the trial transcript and rejected the alleged recantation.
3. The defendant was not entitled to a new trial because he failed to meet his burden of showing that the evidence concerning alleged promises or inducements was newly discovered.

KEY QUOTATIONS

“The burden was on the defendant to show that the evidence in support of his motion was newly discovered; this burden was not met.” (972)

“But this request for “consideration” does not require an inference that it was made as a result of a promise to Fernald in exchange for his testimony.” (973)

FACTUAL BACKGROUND

The defendant had been convicted of receiving stolen property, principally on the testimony of Fernald. Fernald and others later submitted affidavits and testimony asserting that Fernald had lied at trial, but the motion judge rejected the alleged recantation as untruthful. The defendant also relied on evidence that police officers may have offered Fernald assistance or consideration, but the record showed that defense counsel knew of relevant information before trial or had an opportunity to pursue it earlier, and the motion judge credited the prosecuting attorney's denial of any promise.

PROCEDURAL HISTORY

The defendant's conviction had previously been affirmed, along with the denial of three earlier motions for a new trial. In his fourth motion, he asserted newly discovered evidence consisting of an alleged recantation by the principal witness and alleged promises or inducements made to that witness by members of the prosecution team. The motion judge rejected the recantation and found that the evidence concerning promises and inducements was not newly discovered; the Appeals Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Donahue, 369 Mass. 943 (1976), cert. denied, 429 U.S. 833 (1976)
- Commonwealth v. Bernier, 359 Mass. 13, 16 (1971)
- Commonwealth v. Scott, 2 Mass. App. Ct. 763, 764 (1975), S.C. 360 Mass. 695 (1971)
- Commonwealth v. Melanson, 3 Mass. App. Ct. 108, 111 (1975)
- Commonwealth v. Meuse, 3 Mass. App. Ct. 189, 192 (1975)
- Commonwealth v. Subilosky, ante 860 (1978), S.C. 352 Mass. 153 (1967)
- Commonwealth v. Ellison, 376 Mass. 1, 17 (1978)
- Commonwealth v. Richardson, 1 Mass. App. Ct. 348, 349 (1973)
- Commonwealth v. Hubbard, 371 Mass. 160, 175 (1976)
- Graci v. Damon, ante 160, 166 (1978), aff'd on another ground, 376 Mass. 931 (1978)

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