

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. Johnelle M. Brown

479 Mass. 163 (2018) · No. SJC-12313 · Decided March 16, 2018

SUMMARY

The Massachusetts Supreme Judicial Court affirmed the defendant's convictions for assault and battery and witness intimidation. The court held that the District Court had jurisdiction over the witness-intimidation prosecution, rejected claims of ineffective assistance, inadequate jury instructions, and violations of the right to allocution, and upheld the bail revocation and restitution order.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Cypher, J.; Gants, C.J.; Gaziano, J.; Lowy, J.; Budd, J.; Kafker, J.
JURISDICTION	Massachusetts
DECIDED	March 16, 2018
DOCKET	SJC-12313
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appellate review of convictions for assault and battery and witness intimidation, denial of a motion for a new trial, postconviction bail revocation during sentencing, and a restitution order.
STANDARD OF REVIEW	Subject-matter jurisdiction was reviewed as a legal issue. Denial of the motion for a new trial was reviewed for clear error, with special deference because the motion judge also presided over trial. The decision whether to conduct a nonevidentiary hearing was reviewed for abuse of discretion. Bail revocation and the decision to proceed with restitution before a judge other than the trial judge were reviewed for abuse of discretion. The restitution amount was reviewed for abuse of discretion. Ineffective-assistance claims were evaluated under the Saferian standard.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Johnelle M. Brown v. Commonwealth

TOPICS

criminal procedure

statutory interpretation

post-conviction relief

restitution criminal

double jeopardy

PRACTICE AREAS

criminal procedure

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QUESTIONS PRESENTED

1. Whether the District Court had jurisdiction over the witness-intimidation prosecution when the victim was a witness or potential witness at the time of the offense.
2. Whether Brown was entitled to a new trial based on ineffective assistance of counsel, allegedly inadequate jury instructions concerning Internet research, sentencing allocution, double jeopardy, or restitution.
3. Whether the trial judge violated Brown's rights by revoking bail and holding her during the four-day delay before completion of sentencing.
4. Whether a judge other than the trial judge could preside over the restitution hearing.
5. Whether the restitution order was supported by sufficient evidence and whether counsel was ineffective at the restitution hearing.
6. Whether Massachusetts or Federal law provides a constitutional or common-law right to allocution beyond the opportunity required by Mass. R. Crim. P. 28 (b).

HOLDINGS

1. The term "witness" in G. L. c. 218, § 26, includes a witness or potential witness at any stage of a criminal investigation or proceeding; therefore, the District Court had jurisdiction over Brown's witness-intimidation prosecution.
2. Brown was not entitled to a new trial because the proposed testimony of her companion and her own affidavit did not show that additional investigation or testimony would likely have produced a material benefit or changed the verdict.
3. Brown did not prove that counsel's advice caused an involuntary, unintelligent, or unknowing waiver of her fundamental right to testify.
4. The omission of a specific instruction prohibiting Internet research was not reversible error because the judge instructed the jurors not to consider outside information, and there was no evidence that any juror conducted Internet research.
5. Neither the Federal Constitution, the Massachusetts Constitution, nor the common law provides a separate right to allocution beyond the opportunity required by Mass. R. Crim. P. 28 (b). The judge satisfied that rule by permitting counsel and Brown to present mitigating information and could reasonably limit Brown's irrelevant or disruptive statements.
6. Revoking Brown's bail after conviction and holding her during the four-day completion of sentencing did not constitute a second punishment for the same offense and was within the trial judge's discretion.

7. The restitution judge did not abuse his discretion by conducting the hearing while the trial judge was absent.
8. The \$3,100 restitution order was valid because the Commonwealth proved the amount of economic loss by a preponderance of the evidence, the victim provided documentation of the losses, Brown conceded that she caused the damage, and the award did not exceed actual loss.

KEY QUOTATIONS

“Common sense dictates that “witness” in the jurisdictional statute includes “a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type,” as protected by G. L. c. 268, § 13B (1) (c) (i).” (at 169)

“The rule 28 opportunity to speak is not an unlimited right of a defendant to speak endlessly on irrelevant subjects or in a disruptive manner.” (at 179)

“Bail revocation after a conviction is decidedly within a trial judge’s powers.” (at 182)

FACTUAL BACKGROUND

After a restaurant had closed, Brown entered seeking to use the bathroom and attempted to purchase a bottle of juice. After an argument, Brown’s companion assaulted Mehdi Aria, while Brown threw the bottle, kicked the bathroom door, grabbed Mahboobe Aria’s wrist as Mahboobe attempted to call 911, and later punched Mahboobe in the face, causing her telephone to fall and break. Brown and her companion then left in a vehicle. The restaurant, bathroom door, window, and telephone sustained damage.

PROCEDURAL HISTORY

A jury in the District Court convicted Brown of assault and battery and witness intimidation. The trial judge imposed a suspended one-year house-of-correction sentence, probation, and restitution; a different judge later conducted the restitution hearing and ordered \$3,100 in restitution. Brown’s motion for a new trial was denied after a nonevidentiary hearing. The Supreme Judicial Court granted direct appellate review and affirmed.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Muckle, 478 Mass. 1001 (2017)
- Commonwealth v. DeJesus, 440 Mass. 147, 151 (2003)
- Commonwealth v. Cantres, 405 Mass. 238, 240 (1989)
- Energy Express, Inc. v. Department of Pub. Utils., 477 Mass. 571, 576 (2017)
- Meikle v. Nurse, 474 Mass. 207, 210 (2016)
- Harvard Crimson, Inc. v. President & Fellows of Harvard College, 445 Mass. 745, 749 (2006)
- Commonwealth v. Rakes, 478 Mass. 22, 41 (2017)

- Commonwealth v. Squires, 476 Mass. 703, 711 (2017) (Gaziano, J., dissenting)
- Commonwealth v. Williams, 475 Mass. 705, 708 (2016)
- Commonwealth v. Watkins, 473 Mass. 222, 239-241 (2015)
- Commonwealth v. Brewer, 472 Mass. 307, 311 n.10, 313-315 (2015)
- Commonwealth v. Collins, 470 Mass. 255, 270-273 (2014)
- Commonwealth v. Robinson, 444 Mass. 102, 110-111 (2005)
- Commonwealth v. Finn, 362 Mass. 206, 207-208 (1972)
- Commonwealth v. McCreary, 45 Mass. App. Ct. 797, 800 (1998)
- Commonwealth v. Stewart, 383 Mass. 253, 257 (1981)
- Commonwealth v. Leng, 463 Mass. 779, 781 (2012)
- Commonwealth v. Degro, 432 Mass. 319, 334, 337 (2000)
- Commonwealth v. Haddock, 46 Mass. App. Ct. 246, 248-249 (1999)
- Commonwealth v. Lang, 473 Mass. 1, 15-16 (2015) (Hines, J., concurring)
- Commonwealth v. Bell, 460 Mass. 294, 303 (2011)
- Commonwealth v. Jenkins, 458 Mass. 791, 803, 809 (2011)
- Commonwealth v. Satterfield, 373 Mass. 109, 115 (1977)
- Commonwealth v. Lucien, 440 Mass. 658, 671 (2004)
- Commonwealth v. Horne, 476 Mass. 222, 225-226 (2017)
- Commonwealth v. Rodriguez, 63 Mass. App. Ct. 660, 678 n.11 (2005)
- Commonwealth v. Watkins, 425 Mass. 830, 840 (1997)
- Hudson v. United States, 522 U.S. 93, 99-100, 103 (1997)
- Commonwealth v. Morales, 473 Mass. 1019, 1020 (2016)
- Commesso v. Commonwealth, 369 Mass. 368, 374 (1975)
- Mendoza v. Commonwealth, 423 Mass. 771, 777 (1996)
- Commonwealth v. Baro, 73 Mass. App. Ct. 218, 224 (2008)
- Commonwealth v. Denehy, 466 Mass. 723, 740 (2014)
- Commonwealth v. McIntyre, 436 Mass. 829, 834, 836 (2002)
- Commonwealth v. Henry, 475 Mass. 117, 129 (2016)
- Commonwealth v. Kolenovic, 471 Mass. 664, 673-674 (2015), S.C., 478 Mass. 189 (2017)
- Commonwealth v. Domanski, 332 Mass. 66, 78 (1954)