

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. Lopes, 478 Mass. 593

91 N.E.3d 1126 (2017) · Decided September 8, 2017

SUMMARY

The Massachusetts Supreme Judicial Court affirmed Crisostomo Lopes's convictions for murder in the first degree. The court rejected challenges concerning the Commonwealth's peremptory strikes, gang-affiliation evidence, cross-examination of a police witness about prior misconduct, and the prosecutor's closing argument. The court also declined to exercise its authority under Mass. Gen. Laws ch. 278, § 33E, to reduce or set aside the verdict.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Kafker, J.; Budd, J.; Gants, C.J.; Lenk, J.
JURISDICTION	Massachusetts
DECIDED	September 8, 2017
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed his convictions of murder in the first degree after a jury trial, arguing errors in jury selection, admission of gang-affiliation evidence, restriction of cross-examination, and the prosecutor's closing argument.
STANDARD OF REVIEW	Abuse of discretion for the trial judge's rulings concerning peremptory challenges, admission of gang evidence, and impeachment cross-examination; prosecutorial-argument claims are evaluated in context of the entire argument, the evidence, and the jury instructions, with reversal requiring prejudicial error. The court also conducted plenary review under Mass. Gen. Laws ch. 278, § 33E.
PRECEDENTIAL VALUE	published precedential opinion of the Massachusetts Supreme Judicial Court
PARTIES	Crisostomo Lopes v. Commonwealth

TOPICS

- jury selection
- criminal procedure
- evidence
- impeachment
- appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

evidence

constitutional law

appellate practice

QUESTIONS PRESENTED

1. Whether the trial judge abused his discretion in rejecting the defendant's Batson-Soares objections to the Commonwealth's peremptory challenges.
2. Whether evidence concerning Lopes's alleged Homes Avenue gang affiliation and neighborhood gang activity was admissible to establish motive and intent.
3. Whether the trial judge improperly restricted cross-examination of a police eyewitness about a prior internal-affairs investigation and alleged dishonesty.
4. Whether the prosecutor's characterization of the codefendant's theory as an 'insult,' 'farce,' and 'distraction' constituted prejudicial misconduct requiring reversal.
5. Whether the Supreme Judicial Court should exercise its authority under Mass. Gen. Laws ch. 278, § 33E, to reduce or set aside the first-degree murder verdict or order a new trial.

HOLDINGS

1. The trial judge did not abuse his discretion in finding no prohibited race-based pattern for the earlier strikes and in accepting the Commonwealth's explanations for striking juror no. 104 as adequate and genuine. Youth and college-student status were permissible race-neutral grounds, and young adults are not a constitutionally protected group for Batson-Soares purposes.
2. The trial judge properly admitted limited evidence concerning Lopes's alleged Homes Avenue gang affiliation and neighborhood gang activity because it was relevant to motive and intent and explained Lopes's statements invoking Homes Avenue; the limiting instruction sufficiently reduced the risk of unfair prejudice.
3. The trial judge acted within his discretion in excluding five-year-old evidence that Officer Williams had been suspended for lying during an unrelated internal-affairs investigation.
4. The prosecutor's use of the terms 'insult,' 'farce,' and 'distraction' was overly aggressive but did not constitute reversible error because the remarks were made in the context of responding to the codefendant's theory, the prosecutor otherwise marshaled trial evidence, and the judge gave a specific curative instruction.
5. After reviewing the record under chapter 278, section 33E, the court found no basis to reduce or set aside the first-degree murder verdict or order a new trial.

KEY QUOTATIONS

"The judge must then determine whether the explanation is both 'adequate' and 'genuine.'" (478 Mass. at 598)

"The evidence concerning his possible affiliation with the Homes Avenue gang or group may provide you with background information relevant to a possible motive in the case, but it would be improper for you to

conclude that [the defendant] committed the crime for which he is charged ... merely because he was a member of Homes Avenue.” (478 Mass. at 601)

“Placed in context, the prosecutor’s statements constituted an overly aggressive response to the argument by the codefendant’s counsel but not grounds for reversal.” (478 Mass. at 604)

FACTUAL BACKGROUND

The fourteen-year-old victim was riding a motorized scooter in Dorchester when Lopes, riding a bicycle with a juvenile codefendant, intercepted him. Lopes grabbed and held the victim while the codefendant shot him at close range, causing his death. Police recovered the matching firearm, detected gunshot residue on the codefendant and Lopes’s shirt, and heard Lopes make statements invoking the Homes Avenue group and urging the codefendant to take responsibility.

PROCEDURAL HISTORY

A jury convicted Lopes of murder in the first degree on theories of deliberate premeditation and extreme atrocity or cruelty. The Supreme Judicial Court reviewed the asserted trial errors and independently reviewed the record under Massachusetts General Laws chapter 278, section 33E. It found no reversible error and declined to reduce or set aside the verdict or order a new trial.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Jones, 477 Mass. 307, 77 N.E.3d 278 (2017)
- J.E.B. v. Alabama, 511 U.S. 127 (1994)
- Batson v. Kentucky, 476 U.S. 79 (1986)
- Commonwealth v. Soares, 377 Mass. 461, 387 N.E.2d 499 (1979)
- Commonwealth v. Oberle, 476 Mass. 539, 69 N.E.3d 993 (2017)
- Commonwealth v. Issa, 466 Mass. 1, 992 N.E.2d 336 (2013)
- Commonwealth v. Scott, 463 Mass. 561, 977 N.E.2d 490 (2012)
- Commonwealth v. Maldonado, 439 Mass. 460, 788 N.E.2d 968 (2003)
- Commonwealth v. Swafford, 441 Mass. 329, 805 N.E.2d 931 (2004)
- Commonwealth v. Akara, 465 Mass. 245, 988 N.E.2d 430 (2013)
- Commonwealth v. Maldonado, 429 Mass. 502, 709 N.E.2d 809 (1999)
- Commonwealth v. Hightower, 400 Mass. 267, 508 N.E.2d 850 (1987)
- Commonwealth v. Wilson, 427 Mass. 336, 693 N.E.2d 158 (1998)
- Commonwealth v. Nelson, 468 Mass. 1, 7 N.E.3d 1084 (2014)
- Commonwealth v. Dargon, 457 Mass. 387, 930 N.E.2d 707 (2010)
- Commonwealth v. Kater, 432 Mass. 404, 734 N.E.2d 1164 (2000)

- Commonwealth v. Dagraca, 447 Mass. 546, 854 N.E.2d 1249 (2006)
- Commonwealth v. Rosario, 422 Mass. 48, 661 N.E.2d 71 (1996)
- Commonwealth v. LaVelle, 414 Mass. 146, 605 N.E.2d 852 (1993)
- Commonwealth v. Prunty, 462 Mass. 295, 968 N.E.2d 361 (2012)

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