

MASSACHUSETTS SUPREME JUDICIAL COURT

Robinson v. Commonwealth

440 Mass. 1034 (2004) · Decided January 2, 2004

SUMMARY

The Massachusetts Supreme Judicial Court affirmed judgments denying Leon Robinson's petitions under G. L. c. 211, § 3, concerning an order permitting the Commonwealth to obtain his blood for DNA testing and an order denying preservation of a blood stain on his jacket. The court held that because the challenged orders were interlocutory, Robinson failed to show under S.J.C. Rule 2:21 that review could not adequately be obtained after a final adverse judgment.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
JURISDICTION	Massachusetts
DECIDED	January 2, 2004
DISPOSITION	affirmed
PROCEDURAL POSTURE	Robinson appealed the denial by a single justice of the Supreme Judicial Court of two petitions under G. L. c. 211, § 3, challenging interlocutory Superior Court orders in a pending criminal case.
STANDARD OF REVIEW	Under S.J.C. Rule 2:21(2), the petitioner bears the burden of demonstrating that review of the interlocutory trial court decision cannot adequately be obtained on appeal from a final adverse judgment or by other available means.
PRECEDENTIAL VALUE	published opinion
PARTIES	Leon Robinson v. Commonwealth

TOPICS

- appellate procedure
- interlocutory appeal
- writ of certiorari
- fourth amendment
- evidence

PRACTICE AREAS

- criminal appellate procedure
- extraordinary writs
- search and seizure
- evidence preservation

QUESTIONS PRESENTED

1. Whether Robinson could obtain interlocutory relief under G. L. c. 211, § 3 from the Superior Court's order authorizing seizure of his blood sample when he could challenge the seizure after a final adverse judgment.
2. Whether Robinson could obtain interlocutory relief under G. L. c. 211, § 3 from the order permitting DNA testing that would consume the blood stain when the adequacy of a photograph and related evidentiary issues could be reviewed on direct appeal.

HOLDINGS

1. Robinson was not entitled to interlocutory relief because he failed to demonstrate why the legality of the blood seizure could not be adequately reviewed on appeal from a final adverse judgment.
2. Robinson was not entitled to interlocutory relief because he failed to show that his claims concerning destruction of the blood stain and the insufficiency of a photograph could not be adequately reviewed on direct appeal after a conviction.

KEY QUOTATIONS

“True or not, Robinson has not shown why, in the event he is convicted, he could not adequately obtain review on direct appeal from the order allowing the Commonwealth to test the blood stain, and of his claim regarding the insufficiency of any photograph.” (440 Mass. at 1035)

FACTUAL BACKGROUND

In a pending criminal case, the Superior Court authorized the Commonwealth to take a blood sample from Robinson for DNA analysis. The court also denied Robinson's request to preserve a blood stain on his jacket, which the Commonwealth planned to test in a manner that would consume the stain. Robinson argued that the blood seizure implicated the Fourth Amendment and that destruction of the stain would impair his ability to present expert testimony concerning whether the stain was gunshot splatter or had been planted.

PROCEDURAL HISTORY

The Superior Court entered one order allowing the Commonwealth to obtain Robinson's blood sample for DNA analysis and another denying Robinson's motion to preserve a blood stain on his jacket before DNA testing that would consume the sample. Robinson sought extraordinary relief under G. L. c. 211, § 3. A single justice denied both petitions, and the Supreme Judicial Court affirmed because Robinson failed to show that appellate review could not adequately be obtained after a final adverse judgment.

DISPOSITION

affirmed

CASES CITED

- White v. Commonwealth, 439 Mass. 1017, 1017 (2003)
- Commonwealth v. Gordon, 422 Mass. 816, 836 (1996)

- Commonwealth v. Hunter, 426 Mass. 715, 718-719 (1998)
- Commonwealth v. Shipps, 399 Mass. 820, 833-837 (1987)

OPINION

PER CURIAM.

Leon Robinson appeals from the denial, by a single justice of this court, of two petitions he filed under G. L. c. 211, § 3. Robinson had sought relief from two orders entered by a judge in the Superior Court in a pending criminal case. One order allowed the Commonwealth to take a blood sample from Robinson for deoxyribonucleic acid (DNA) analysis.

The other order denied Robinson's motion to preserve a blood stain found on a jacket he was wearing when arrested — a blood stain on which the Commonwealth plans to perform DNA testing and, in the process, consume. We affirm the judgments of the single justice.

Because the challenged trial court orders are interlocutory, S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), applies.¹ Robinson asserts that allowing the Commonwealth to take a blood sample from him would violate his right *1035against unreasonable searches and seizures. Yet he fails to demonstrate why he could not challenge the legality of the seizure on appeal from an adverse judgment.

See *White v. Commonwealth*, 439 Mass. 1017, 1017 (2003), and cases cited. Robinson also complains about the Commonwealth's plan to perform a DNA test on, and destroy, the blood found on his jacket. Robinson argues that destruction of the blood stain would deprive him of the opportunity to pursue, through an expert witness, his defense that the stain did not have the characteristics of splatter from a gunshot, and that the blood could have been planted on his jacket sometime after the shooting.

According to Robinson, the judge ruled that a photograph of the blood stain would have to be taken before the Commonwealth could perform the DNA test. See *Commonwealth v. Gordon*, 422 Mass. 816, 836 (1996) (when Commonwealth "performs testing that would exhaust the evidence," photographing evidence beforehand is "better practice"). Nonetheless, Robinson complains that, according to his expert, a photograph "will not be as effective" as the original sample to corroborate the expert's testimony.

True or not, Robinson has not shown why, in the event he is convicted, he could not adequately obtain review on direct appeal from the order allowing the Commonwealth to test the blood stain, and of his claim regarding the insufficiency of any photograph. See, e.g., *Commonwealth v. Hunter*, 426 Mass. 715, 718-719 (1998); *Commonwealth v. Shipps*, 399 Mass. 820, 833-837 (1987).

Robinson has not, therefore, satisfied his burden under rule 2:21 (2). The case was submitted on the papers filed, accompanied by a memorandum of law. James H. Budreau for the petitioner. Judgments affirmed. Robinson represents that he inquired of the “Clerk for the Supreme Judicial Court” whether S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), applied and was informed that the case would “follow a normal appellate track” instead of following the provisions *1035 of rule 2:21.

Thus, rather than filing a memorandum under rule 2:21 (2), Robinson filed a brief. In these unique circumstances, we treat Robinson’s brief as a memorandum under rule 2:21, and examine whether “review of the trial court decision cannot adequately be obtained on appeal from any final adverse judgment in the trial court or by other available means.” Rule 2:21 (2).