

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. Wall

469 Mass. 652 (2014) · No. SJC-09850 · Decided September 11, 2014

SUMMARY

The Massachusetts Supreme Judicial Court affirmed Gregory A. Wall's first-degree murder conviction and found no basis under G. L. c. 278, § 33E, to reduce or reverse the verdict. The court addressed the admission of recorded telephone calls and a toxicology record, ineffective-assistance claims, jury instructions concerning intoxication, and an alleged violation of the right to a public trial.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Cordy, J.; Ireland, C.J.; Spina, J.; Gants, J.; Duffly, J.
JURISDICTION	Massachusetts
DECIDED	September 11, 2014
DOCKET	SJC-09850
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a first-degree murder conviction, consolidated with appeals from the denial of the defendant's first and second motions for a new trial.
STANDARD OF REVIEW	Preserved evidentiary and instructional claims were reviewed for prejudicial error; the unobjected-to toxicology-report claim was reviewed for a substantial likelihood of a miscarriage of justice; ineffective-assistance claims were reviewed under the applicable standard favorable to capital defendants; evidentiary relevance and prejudice determinations were reviewed for abuse of discretion; and the waived public-trial claim was reviewed under G. L. c. 278, § 33E.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court opinion; precedential.
PARTIES	Gregory A. Wall v. Commonwealth

TOPICS

- evidence
- hearsay
- relevance
- impeachment
- criminal procedure

PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate procedure

constitutional law

QUESTIONS PRESENTED

1. Whether recorded telephone conversations between Wall and his incarcerated girlfriend were relevant and admissible to show his voice, sobriety, mental state, and ability to form the mental state required for murder, and whether admission of the first recording was prejudicial.
2. Whether defense counsel was ineffective for failing to impeach the girlfriend regarding her assertion that no Ativan was present in the apartment.
3. Whether preliminary, unconfirmed negative urine toxicology results in a hospital record were admissible under the medical-records exception and, if not, whether their admission created a substantial likelihood of a miscarriage of justice.
4. Whether the jury instruction explaining that the statutory 'legal limit' for intoxication applies to operating a motor vehicle, not murder, was erroneous or misleading.
5. Whether Wall's Sixth Amendment public-trial right was violated when his uncle allegedly was excluded during jury empanelment, and whether the claim was waived.

HOLDINGS

1. The trial judge did not abuse her discretion in admitting the later telephone recordings because they were relevant to Wall's mental state, sobriety, and ability to form the intent and malice required for murder, and their probative value was not substantially outweighed by unfair prejudice. Admission of the first recording was error because its relevance was marginal, but the error was not prejudicial.
2. Wall failed to establish ineffective assistance of counsel because the omitted impeachment was not shown to have materially prejudiced him, and the jury could recognize that Reid lacked personal knowledge of whether Ativan was in the apartment.
3. A hospital record containing preliminary toxicology-screen results expressly described as presumptive and unconfirmed is inadmissible under G. L. c. 233, § 79 because the disclaimer defeats the presumption of reliability ordinarily attached to hospital records. The erroneous admission nevertheless did not create a substantial likelihood of a miscarriage of justice.
4. The instruction that Massachusetts has no statutory 'legal limit' of intoxication for purposes other than operating a motor vehicle was accurate and did not improperly diminish the evidence of intoxication or Wall's ability to form the required mental state.
5. Wall waived his public-trial claim by failing to object at trial or raise it in his first motion for a new trial. Even assuming the courtroom was closed during jury empanelment, the record did not establish a substantial likelihood of a miscarriage of justice warranting relief under G. L. c. 278, § 33E.

KEY QUOTATIONS

"We conclude that the presumption of reliability that attaches to the content of hospital records is defeated where the record explicitly indicates that the results of a toxicology screen are "presumptive based only on

screening methods and have not been confirmed by a second independent chemical method.” (at 674-675)

“The only “legal limit” recognized by the Commonwealth in the context of criminal conduct is the presumption of intoxication when driving an automobile with a BAC of 0.08 per cent or above.” (at 680)

“Where defense counsel did not object to any alleged court room closure at trial, and the defendant failed to raise the claim in his first motion for new trial, we conclude the defendant’s right to a public trial during jury empanelment has been waived.” (at 685-686)

FACTUAL BACKGROUND

Gregory A. Wall met the victim at a Quincy restaurant and later brought her to his apartment. Neighbors heard prolonged banging, saw Wall moving a barrel containing a human leg, and called police; officers found the victim’s dismembered body, Wall hiding in a closet, and the victim’s blood on his hands and clothing. Wall gave inconsistent accounts and claimed that alcohol and Ativan had rendered him unconscious while a third party committed the murder.

PROCEDURAL HISTORY

After a six-day trial in the Superior Court, the defendant was convicted of murder in the first degree on theories of premeditation and extreme atrocity or cruelty and sentenced to life imprisonment without parole. His first motion for a new trial was denied. His second motion, which raised a public-trial claim concerning jury empanelment, was deemed waived. The Supreme Judicial Court reviewed the consolidated appeals and its independent authority under G. L. c. 278, § 33E, and affirmed.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Sanna, 424 Mass. 92, 93 (1997)
- Commonwealth v. Flebotte, 417 Mass. 348, 353 (1994)
- Commonwealth v. Sicari, 434 Mass. 732, 750 (2001)
- Commonwealth v. LaCorte, 373 Mass. 700, 702 (1977)
- Commonwealth v. Vitello, 376 Mass. 426, 440 (1978)
- Commonwealth v. Mendes, 406 Mass. 201 (1989)
- Commonwealth v. Keo, 467 Mass. 25, 32 (2014)
- Commonwealth v. Smiley, 431 Mass. 477, 484 (2000)
- Commonwealth v. Marrero, 427 Mass. 65, 67-68 (1998)
- Commonwealth v. Valentin, 420 Mass. 263, 270 (1995)
- Commonwealth v. Sylvia, 456 Mass. 182, 195 (2010)
- Commonwealth v. Pope, 406 Mass. 581, 588 (1990)
- Commonwealth v. Lavoie, 464 Mass. 83, 89 (2013)

- Commonwealth v. Saferian, 366 Mass. 89, 96 (1974)
- Commonwealth v. Fisher, 433 Mass. 340, 357 (2001)
- Commonwealth v. Bart B., 424 Mass. 911, 916 (1997)
- Commonwealth v. Green, 408 Mass. 48, 50-51 (1990)
- Commonwealth v. Francis, 450 Mass. 132, 138 (2007)
- Bouchie v. Murray, 376 Mass. 524, 527-528, 531 (1978)
- Commonwealth v. Irene, 462 Mass. 600, 612 (2012)
- Doyle v. Dong, 412 Mass. 682, 685 (1992)
- Commonwealth v. Lampron, 65 Mass. App. Ct. 340, 344 (2005)
- Commonwealth v. Johnson, 59 Mass. App. Ct. 164, 167-168 (2003)
- Commonwealth v. Wright, 411 Mass. 678, 682 (1992)
- Commonwealth v. Corcione, 364 Mass. 611, 618 (1974)
- Commonwealth v. Batchelder, 407 Mass. 752, 759 (1990)
- Commonwealth v. Taylor, 263 Mass. 356, 362 (1928)
- Commonwealth v. Cohen (No. 1), 456 Mass. 94, 105-106 (2010)
- United States v. Marcus, 560 U.S. 258, 263 (2010)
- Commonwealth v. Mains, 433 Mass. 30, 33 n.3 (2000)
- Commonwealth v. Morganti, 467 Mass. 96, 102-103 (2014)
- Commonwealth v. Alebord, 467 Mass. 106, 113 (2014)
- Commonwealth v. Amirault, 424 Mass. 618, 641 (1997)
- Commonwealth v. Randolph, 438 Mass. 290, 294, 297 (2002)
- Commonwealth v. Azar, 435 Mass. 675, 687 (2002), S.C., 444 Mass. 72 (2005)
- Commonwealth v. Dyer, 460 Mass. 728, 736-737 (2011)
- Commonwealth v. Horton, 434 Mass. 823, 833 (2001)

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