

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Ortega

480 Mass. 603 (2018) · No. SJC-12145 · Decided September 17, 2018

SUMMARY

The Massachusetts Supreme Judicial Court vacated George Ortega's convictions for first-degree murder and carrying a firearm without a license. The court held that the trial judge abused her discretion by failing to require an explanation for the prosecutor's peremptory challenge of a female African-American juror. The court also concluded that the evidence warranted jury instructions on self-defense and voluntary manslaughter based on excessive use of force in self-defense.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Lowy, J.; Gants, C.J.; Cypher, J.; Kafker, J.
JURISDICTION	Massachusetts
DECIDED	September 17, 2018
DOCKET	SJC-12145
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	George Ortega appealed from Superior Court convictions for murder in the first degree and carrying a firearm without a license.
STANDARD OF REVIEW	The court reviewed the ruling on the peremptory challenge for abuse of discretion. For the requested jury instructions, it viewed the evidence in the light most favorable to the defendant and considered whether any view of the evidence would support the instructions.
PRECEDENTIAL VALUE	published precedential opinion of the Massachusetts Supreme Judicial Court
PARTIES	George Ortega v. Commonwealth

TOPICS

- jury selection
- jury instructions
- self defense
- criminal procedure
- fourteenth amendment

PRACTICE AREAS

- criminal law
- criminal procedure
- constitutional law
- jury selection
- jury instructions

QUESTIONS PRESENTED

1. Whether the trial judge abused her discretion by declining to require the prosecutor to provide a race- and gender-neutral explanation for exercising a peremptory challenge against a female African-American prospective juror.
2. Whether the evidence, viewed in the light most favorable to the defendant, warranted jury instructions on self-defense and voluntary manslaughter based on excessive force in self-defense.
3. Whether the defendant's assertion of a misidentification defense eliminated his entitlement to a self-defense instruction.

HOLDINGS

1. The trial judge abused her discretion by relying exclusively on the presence of one seated female African-American juror and failing to consider all relevant circumstances in determining whether the defendant made a prima facie showing of discriminatory use of the prosecutor's peremptory challenge.
2. The defendant was entitled to a self-defense instruction because, viewing the evidence in the light most favorable to him, a rational jury could find a reasonable doubt that he reasonably and actually believed he faced imminent death or serious bodily harm, that he was the first to threaten deadly force, and that he failed to use all reasonable means to avoid physical combat.
3. The evidence warranted an instruction on voluntary manslaughter based on excessive force in self-defense.
4. A defendant does not lose the right to a self-defense instruction merely because he also asserts a misidentification defense.

KEY QUOTATIONS

"The presence of one empanelled African-American juror . . . cannot be dispositive." (at 609)

"Our case law does not, however, 'impose an absolute duty to retreat regardless of personal safety considerations,' Benoit, 452 Mass. at 227; it only requires that a person avoid using deadly force against another if there is a 'reasonable avenue of escape available'" (at 615-616)

"In a deadly force case, if the Commonwealth fails to disprove all the elements of self-defense except the element of reasonableness of the force used, then the jury may not return a verdict of murder, but must find the defendant guilty of voluntary manslaughter." (at 617)

FACTUAL BACKGROUND

The prosecution arose from the shooting death of Steven Fuentes on May 24, 2012, in the context of a drug-territory dispute in Boston. Earlier that day, Fuentes confronted Ortega, accused him of selling drugs in Fuentes's territory, punched him, and was met by Ortega reaching toward his waist. Later, Fuentes and Ortega argued on the street; viewing the evidence favorably to Ortega, the jury could have found that Fuentes displayed or attempted to fire a gun before Ortega shot him while moving backward. Fuentes died from a gunshot wound, and police recovered shell casings from both .45-caliber and .22-caliber weapons.

PROCEDURAL HISTORY

A Suffolk County Superior Court jury convicted Ortega of murder in the first degree on a deliberate-premeditation theory and carrying a firearm without a license. The trial judge declined to require the prosecutor to explain a peremptory challenge to a female African-American prospective juror and declined to instruct the jury on self-defense and voluntary manslaughter. The Supreme Judicial Court concluded that both rulings were erroneous, vacated the convictions, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The murder and firearm convictions were vacated and set aside. The case was remanded to the Superior Court for further proceedings consistent with the opinion, including a new trial.

CASES CITED

- Commonwealth v. Lopes, 478 Mass. 593, 596 (2018)
- Commonwealth v. Soares, 377 Mass. 461, 486-488, cert. denied, 444 U.S. 881 (1979)
- Batson v. Kentucky, 476 U.S. 79, 84-88, 96-97 (1986)
- Commonwealth v. Jordan, 439 Mass. 47, 62 (2003)
- Commonwealth v. Robertson, 480 Mass. 383, 397 (2018)
- Commonwealth v. Issa, 466 Mass. 1, 8-11 & n.14 (2013)
- Commonwealth v. Benoit, 452 Mass. 212, 218, 227 (2008)
- Commonwealth v. Jones, 477 Mass. 307, 319-322, 325-326 (2017)
- Commonwealth v. Prunty, 462 Mass. 295, 307 n.17, 310 n.22 (2012)
- Commonwealth v. Cousin, 449 Mass. 809, 818, 822, cert. denied, 553 U.S. 1007 (2008)
- Commonwealth v. Hampton, 457 Mass. 152, 171 (2010)
- Commonwealth v. Little, 431 Mass. 782, 785 (2000)
- Commonwealth v. Berry, 431 Mass. 326, 334-335 (2000)
- Commonwealth v. Pike, 428 Mass. 393, 395-399 (1998)
- Commonwealth v. Harrington, 379 Mass. 446, 450-452 (1980)
- Commonwealth v. Santos, 454 Mass. 770, 773 (2009)
- Commonwealth v. Pring-Wilson, 448 Mass. 718, 733 (2007)
- Commonwealth v. Espada, 450 Mass. 687, 693 (2008)
- Commonwealth v. Maguire, 375 Mass. 768, 772-773 (1978)
- Commonwealth v. Harris, 464 Mass. 425, 429-430, 432-433 (2013)
- Commonwealth v. Iacoviello, 90 Mass. App. Ct. 231, 240-242 (2016)
- Commonwealth v. Chambers, 465 Mass. 520, 529-530 (2013)

- Commonwealth v. Avila, 454 Mass. 744, 769 (2009)
- Commonwealth v. Pasteur, 66 Mass. App. Ct. 812, 820 (2006)
- Commonwealth v. Thomas, 429 Mass. 146, 154-155 (1999)
- Commonwealth v. Anderson, 396 Mass. 306, 313 (1985)
- Commonwealth v. Walden, 380 Mass. 724, 726 (1980)
- Commonwealth v. Hakkila, 42 Mass. App. Ct. 129, 130 (1997)
- Commonwealth v. Woodward, 427 Mass. 659, 662-663 (1998)
- Commonwealth v. Grassie, 476 Mass. 202, 210 (2017)
- Commonwealth v. Glacken, 451 Mass. 163, 167 (2008)
- Commonwealth v. Walker, 443 Mass. 213, 216 (2005)
- Commonwealth v. Vanderpool, 367 Mass. 743, 746 (1975)