

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Richardson, 479 Mass. 344

94 N.E.3d 819 (2018) · No. SJC-12375 · Decided April 17, 2018

SUMMARY

The Massachusetts Supreme Judicial Court considered whether probable cause supported the criminal complaint and search warrant issued after police discovered a medical-marijuana grow operation in the defendant's home. The court addressed jury instructions concerning possession with intent to distribute and lawful medical-marijuana cultivation, including the significance of industry best practices. The court reversed in part and affirmed in part.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Kafker, J.; Gants, C.J.; Gaziano, J.; Lowy, J.; Cypher, J.
JURISDICTION	Massachusetts
DECIDED	April 17, 2018
DOCKET	SJC-12375
DISPOSITION	other
PROCEDURAL POSTURE	Defendant appealed convictions for unlawful cultivation of marijuana and possession of marijuana with intent to distribute after the trial court denied his motion to dismiss and motion to suppress. The Massachusetts Supreme Judicial Court granted direct appellate review.
STANDARD OF REVIEW	The court reviewed the denial of suppression from the four corners of the search-warrant affidavit, asking whether the magistrate had a substantial basis to conclude that a crime had been committed and that the items sought were related to the criminal activity and probably located at the place to be searched. It reviewed the unpreserved jury-instruction claims for a substantial risk of a miscarriage of justice. It reviewed sufficiency of the evidence by asking whether, viewing the evidence in the light most favorable to the Commonwealth, any rational trier of fact could find guilt beyond a reasonable doubt.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Joshua A. Richardson v. Commonwealth

TOPICS

criminal procedure

search and seizure

probable cause

suppression of evidence

statutory interpretation

PRACTICE AREAS

criminal procedure

search and seizure

controlled substances

evidence

statutory interpretation

QUESTIONS PRESENTED

1. Whether the criminal complaint and search-warrant affidavit established probable cause despite Richardson's authorization to cultivate medical marijuana.
2. Whether the jury instructions for possession with intent to distribute and unlawful cultivation properly accounted for the medical-marijuana statutory and regulatory scheme.
3. Whether the evidence was sufficient to prove that Richardson intended to cultivate more than a sixty-day supply of usable marijuana.
4. Whether the evidence was sufficient to prove intent to distribute marijuana.
5. Whether the medical-marijuana law's sixty-day supply limit was unconstitutionally vague as applied.

HOLDINGS

1. A warrant affidavit is insufficient when it merely shows that a person is growing marijuana, but probable cause may exist when the affidavit also indicates sales or intent to distribute or provides a qualified basis to believe that cultivation exceeds the authorized sixty-day supply. Richardson's affidavit established probable cause because it included the affiant's qualified opinion that the grow exceeded the personal-use amount and additional evidence suggesting nonpersonal use and distribution.
2. The motion to dismiss was properly denied because the complaint application, viewed from its four corners, supplied substantially the same factual basis as the sufficient search-warrant affidavit.
3. The trial judge did not err by instructing that possession of marijuana, rather than only possession of usable marijuana, could support possession with intent to distribute. The judge also was not required, on the record presented, to give a best-practices instruction because any omission did not create a substantial risk of a miscarriage of justice.
4. When a defendant produces evidence of a valid hardship cultivation registration, unlawful cultivation may be proved either by intentional cultivation of more than the amount authorized for a sixty-day supply or by cultivation with intent to distribute for nonpersonal use. Under the first theory, the Commonwealth must prove both that the defendant cultivated more than the authorized amount and that the defendant intentionally cultivated more than that amount. The instructions given here were erroneous because they did not require proof of intentional cultivation beyond the authorized amount.
5. The evidence was insufficient to prove beyond a reasonable doubt that Richardson intended to cultivate more than ten ounces of usable marijuana in a sixty-day period.
6. The evidence was sufficient to support Richardson's conviction for possession of marijuana with intent to distribute.

7. The court did not decide whether the medical-marijuana sixty-day supply limit was unconstitutionally vague as applied because reversal of the unlawful-cultivation conviction and the insufficiency of the evidence precluded retrial on that charge.

KEY QUOTATIONS

“A search warrant affidavit that merely sets out facts establishing probable cause to believe a homeowner is growing marijuana on the property to be searched, without more, does not establish probable cause to believe a crime has been committed.” (479 Mass. at 351-352)

“A patient or caregiver's use of industry best practices is not evidence of criminal intent.” (479 Mass. at 359)

“It is not enough that the plants happen to yield more than ten ounces in a sixty-day period; the medical marijuana regulations contemplate a patient's ability to return excess marijuana to a medical dispensary.” (479 Mass. at 360-361)

“Rather, the Commonwealth must show that the defendant was intentionally cultivating more than ten ounces of usable marijuana in a sixty-day period.” (479 Mass. at 361)

“Even construing the evidence in the light most favorable to the Commonwealth, the testimony as to the defendant's yield, based primarily on a single photograph of his plants, is too speculative for a rational fact finder to conclude beyond a reasonable doubt that the defendant intended to cultivate more than ten ounces of usable marijuana in a sixty-day period.” (479 Mass. at 367)

FACTUAL BACKGROUND

Richardson possessed a valid physician's written certification authorizing medical-marijuana cultivation and permitting him to pursue home cultivation while Massachusetts's dispensary and hardship-registration systems were not yet operational. After Richardson reported a home invasion, police entered his home to search for intruders and observed marijuana-growing equipment and marijuana plants. A search warrant resulted in the seizure of twenty-two plants, grow lights, fertilizer, plastic bags, and a scale; police also found \$2,135 on Richardson. The Commonwealth's evidence concerning the plants' expected yield was speculative, but the combination of the grow operation, cash, scale, home-invasion evidence, and Richardson's limited personal use supported the possession-with-intent-to-distribute conviction.

PROCEDURAL HISTORY

A criminal complaint was sworn to in the Framingham Division of the District Court Department. The trial court denied Richardson's motion to dismiss for lack of probable cause and his motion to suppress statements and evidence. Following a jury trial, he was convicted of unlawful cultivation of marijuana and possession with intent to distribute marijuana. The Supreme Judicial Court affirmed the possession-with-intent-to-distribute conviction but reversed the unlawful-cultivation conviction.

DISPOSITION

other

REMAND INSTRUCTIONS

The possession-with-intent-to-distribute conviction remains affirmed. The unlawful-cultivation conviction is reversed; because the evidence was insufficient to support intentional cultivation beyond the sixty-day supply, retrial on that charge is precluded.

CASES CITED

- Commonwealth v. Canning, 471 Mass. 341 (2015)
- Commonwealth v. O'Day, 440 Mass. 296 (2003)
- Commonwealth v. Humberto H., 466 Mass. 562 (2013)
- Commonwealth v. DiBennadetto, 436 Mass. 310 (2002)
- Commonwealth v. Bell, 83 Mass. App. Ct. 61 (2013)
- Commonwealth v. St. Louis, 473 Mass. 350 (2015)
- Commonwealth v. Clermy, 421 Mass. 325 (1995)
- Commonwealth v. Scala, 380 Mass. 500 (1980)
- Commonwealth v. Sendele, 18 Mass. App. Ct. 755 (1984)
- Commonwealth v. Alphas, 430 Mass. 8 (1999)
- Commonwealth v. Horne, 476 Mass. 222 (2017)
- Commonwealth v. Shea, 467 Mass. 788 (2014)
- Commonwealth v. Rogers, 459 Mass. 249, cert. denied, 565 U.S. 1080 (2011)
- Commonwealth v. Palmer, 464 Mass. 773 (2013)
- Commonwealth v. Keefner, 461 Mass. 507 (2012)
- Warner-Lambert Co. v. Execuquest Corp., 427 Mass. 46 (1998)
- Commonwealth v. Peters, 429 Mass. 22 (1999)
- Commonwealth v. Latimore, 378 Mass. 671 (1979)
- Commonwealth v. Brown, 477 Mass. 805 (2017)
- Commonwealth v. Ellis, 356 Mass. 574 (1968)
- Commonwealth v. Holiday, 349 Mass. 126 (1965)
- Commonwealth v. Little, 453 Mass. 766 (2009)
- Commonwealth v. Grissett, 66 Mass. App. Ct. 454 (2006)
- Commonwealth v. Rugaber, 369 Mass. 765 (1976)
- Commonwealth v. Wilson, 441 Mass. 390 (2004)
- Commonwealth v. Clark, 446 Mass. 620 (2006)
- Commonwealth v. Montanez, 410 Mass. 290 (1991)
- Commonwealth v. LaPerle, 19 Mass. App. Ct. 424 (1985)
- Commonwealth v. Sepheus, 468 Mass. 160 (2014)

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