

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Barbosa

463 Mass. 116 (2012) · Decided August 6, 2012

SUMMARY

The Massachusetts Supreme Judicial Court affirmed the defendant’s convictions for first-degree murder and firearms offenses arising from a shooting at a Brockton party. The court held that the trial judge erred in admitting unrelated nine-millimeter ammunition, a magazine, apartment security measures, and hearsay testimony concerning a witness’s recantation, but concluded that the errors were not prejudicial in light of the strong evidence of guilt. The court also rejected the defendant’s remaining claims and declined to grant relief under G. L. c. 278, § 33E.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Cordy, J.
JURISDICTION	Massachusetts
DECIDED	August 6, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from convictions of murder in the first degree and firearms offenses, including review under the Massachusetts Supreme Judicial Court's statutory responsibilities under G. L. c. 278, § 33E.
STANDARD OF REVIEW	Evidentiary rulings were reviewed for abuse of discretion and prejudice; the search-warrant affidavit was reviewed under the Aguilar-Spinelli probable-cause test by examining the four corners of the affidavit; entitlement to a self-defense or manslaughter instruction was evaluated under the evidence viewed in the light most favorable to the defendant; prejudice was assessed under the Massachusetts harmless-error standard; and the entire record was reviewed under G. L. c. 278, § 33E.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Commonwealth v. Barbosa

TOPICS

- evidence
- harmless error
- suppression of evidence
- probable cause
- self defense

PRACTICE AREAS

criminal law

criminal procedure

evidence

constitutional criminal procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial judge improperly admitted nine millimeter ammunition, a magazine, and security measures found in the defendant's apartment.
2. Whether hearsay testimony from a State trooper concerning an identifying witness's statements and refusal to sign a recanting affidavit was admissible as a prior consistent statement.
3. Whether the defendant's pretrial photographic-array and grand-jury identifications were admissible as substantive evidence when the witness also identified the defendant at trial.
4. Whether the search-warrant affidavit established probable cause under the Aguilar-Spinelli test.
5. Whether the evidence required instructions on excessive force in defense of another or voluntary manslaughter based on reasonable provocation.
6. Whether the evidence was sufficient to support a jury instruction on extreme atrocity or cruelty.

HOLDINGS

1. The trial judge erred by admitting nine millimeter ammunition and a magazine that could not have been used with the .38 caliber murder weapon, and by admitting the security camera, police scanner, and pit bulls as evidence bearing on the defendant's access to firearms or possession. The errors were not prejudicial in light of the strong properly admitted evidence, limiting instruction, and minimal emphasis given to the evidence.
2. The State trooper's testimony concerning DeMiranda's statements about the defendant's alleged effort to induce a recantation was inadmissible as a prior consistent statement because the defendant had not claimed that DeMiranda fabricated those particular conversations. The error was harmless because the testimony was cumulative and the other evidence of guilt was substantial.
3. A witness's prior photographic-array and grand-jury identifications are admissible as substantive evidence when the witness testifies at trial and is subject to cross-examination, even when the witness also identifies the defendant in court.
4. The search-warrant affidavit established probable cause under the Aguilar-Spinelli test because the informants described firsthand observations and their accounts mutually corroborated one another and were corroborated by the defendant's own statements.
5. The evidence did not warrant an instruction on excessive force in defense of another or voluntary manslaughter based on reasonable provocation. The defendant had time to assess the fight, the person he sought to protect had initiated the violence, and the defendant left and returned several minutes later, indicating that he had cooled off.

KEY QUOTATIONS

"The judge should not have admitted the nine millimeter evidence, because its relevance was substantially outweighed by the danger of unfair prejudice to the defendant." (463 Mass. at 123)

“A witness’s pretrial identification is admissible for substantive purposes, even in the absence of an in-court identification, provided the identifying witness testifies at trial and is subject to cross-examination.” (463 Mass. at 130)

“Taken together, the statements by the defendant and the three informants provided probable cause to issue a search warrant for evidence relating to the homicide that might be found in the defendant’s residence.” (463 Mass. at 135)

FACTUAL BACKGROUND

During a crowded, dark party in Brockton, the defendant intervened in a fight, left the apartment, returned several minutes later, and fired a single shot from a .38 caliber firearm into the living room. The shot killed Hercules Dossantos, and three attendees identified the defendant as the shooter. Police later searched the defendant's apartment pursuant to a warrant and recovered firearms-related items that could not have been used with the murder weapon, along with security equipment. The defendant was also accused of attempting to induce identifying witness Jose DeMiranda to recant, and the Commonwealth introduced evidence concerning pretrial identifications and the search.

PROCEDURAL HISTORY

A jury convicted the defendant of murder in the first degree on theories of deliberate premeditation and extreme atrocity or cruelty, along with four firearms offenses. The defendant appealed, challenging evidentiary rulings, the denial of suppression, the admission of prior identifications, the failure to instruct on manslaughter, and the sufficiency of the evidence for extreme atrocity or cruelty. The Supreme Judicial Court held that several evidentiary rulings were erroneous but nonprejudicial, rejected the remaining claims, declined to reduce the degree of guilt or order a new trial under G. L. c. 278, § 33E, and affirmed; the ammunition-possession indictment had been dismissed as duplicative at sentencing.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Martinez, 431 Mass. 168, 174-175 (2000)
- Commonwealth v. Flebotte, 417 Mass. 348, 353 (1994)
- Commonwealth v. Williams, 456 Mass. 857, 871 & n.11 (2010)
- Commonwealth v. Ashman, 430 Mass. 736, 744 (2000)
- Commonwealth v. James, 424 Mass. 770, 779-780 (1997)
- Commonwealth v. Toro, 395 Mass. 354, 355-358 (1985)
- Commonwealth v. Ridge, 455 Mass. 307, 309, 322-323 (2009)
- Commonwealth v. Marquetty, 416 Mass. 445, 448-449 (1993)
- Commonwealth v. Otsuki, 411 Mass. 218, 235-236 (1991)
- Commonwealth v. Simpson, 434 Mass. 570, 583 (2001)

- Commonwealth v. Richardson, 59 Mass. App. Ct. 94, 102-103 (2003)
- Commonwealth v. Graham, 431 Mass. 282, 288, cert. denied, 531 U.S. 1020 (2000)
- Commonwealth v. McLaughlin, 79 Mass. App. Ct. 670, 680 (2011)
- Commonwealth v. Latimore, 378 Mass. 671, 677 (1979)
- Commonwealth v. Kowalski, 33 Mass. App. Ct. 49, 51 (1992)
- Commonwealth v. Novo, 449 Mass. 84, 93 (2007)
- Commonwealth v. Rivera, 430 Mass. 91, 99-100 (1999)
- Commonwealth v. Avila, 454 Mass. 744, 758-759 (2009)
- Commonwealth v. Thomas, 429 Mass. 146, 159-160 (1999)
- Commonwealth v. Bruce, 61 Mass. App. Ct. 474, 482-483 (2004)
- Commonwealth v. McCoy, 456 Mass. 838, 852 (2010)
- Commonwealth v. Walker, 460 Mass. 590, 607-608 (2011)
- Commonwealth v. Cong Duc Le, 444 Mass. 431, 441-442 (2005)
- Commonwealth v. Sylvia, 456 Mass. 182, 184 n.5 (2010)
- Commonwealth v. Schand, 420 Mass. 783, 795-796 (1995)
- Commonwealth v. Delong, 60 Mass. App. Ct. 528, 532 (2004)
- Commonwealth v. Adams, 458 Mass. 766, 771, 773, 775 (2011)
- Commonwealth v. Scott, 408 Mass. 811, 824 n.14 (1990)
- Commonwealth v. Tevlin, 433 Mass. 305, 318 (2001)
- Spinelli v. United States, 393 U.S. 410 (1969)
- Aguilar v. Texas, 378 U.S. 108 (1964)
- Commonwealth v. Cavitt, 460 Mass. 617, 626 (2011)
- Commonwealth v. Lopes, 455 Mass. 147, 155-156 (2009)
- Commonwealth v. Allen, 406 Mass. 575, 578 (1990)
- Commonwealth v. Alfonso A., 438 Mass. 372, 374 (2003)
- Commonwealth v. Nowells, 390 Mass. 621, 627 (1983)
- Commonwealth v. Chipman, 418 Mass. 262, 270 n.5 (1994)
- Commonwealth v. Harrington, 379 Mass. 446, 450 (1980)
- Commonwealth v. Deagle, 10 Mass. App. Ct. 748, 751 (1980)
- Commonwealth v. Young, 461 Mass. 198, 212 (2012)
- Commonwealth v. Haith, 452 Mass. 409, 415 (2008)
- Commonwealth v. Maguire, 375 Mass. 768, 772 (1978)
- Commonwealth v. Espada, 450 Mass. 687, 693 (2008)
- Commonwealth v. Donlan, 436 Mass. 329, 333-334 (2002)
- Commonwealth v. Andrade, 422 Mass. 236, 237 (1996)
- Commonwealth v. Smith, 460 Mass. 318, 325-326 (2011)
- Commonwealth v. Coleman, 366 Mass. 705, 707-708, 715 (1975)

- Commonwealth v. Montalvo, 76 Mass. App. Ct. 319, 324 (2010)
- Commonwealth v. Arias, 29 Mass. App. Ct. 613, 619-620 (1990), S.C., 410 Mass. 1005 (1991)
- Currier v. National Bd. of Med. Examiners, ante 1, 21 n.21 (2012)

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