

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. Rodriguez

437 Mass. 554 (2002) · Decided August 19, 2002

SUMMARY

The Massachusetts Supreme Judicial Court affirmed Rolando Rodriguez’s conviction for murder in the first degree based on felony-murder and affirmed the denial of his motion for a new trial. The court rejected challenges concerning the presumption of innocence, expert-witness instructions and testimony, prosecutorial argument and questioning, appeals to juror sympathy, and ineffective assistance of counsel. The court also declined to exercise its authority under G. L. c. 278, § 33E, to order a new trial or reduce the murder conviction.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Cordy, J.
JURISDICTION	Massachusetts
DECIDED	August 19, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Rodriguez appealed convictions for murder in the first degree and armed robbery, as well as the denial of his motion for a new trial. He argued instructional error, improper prosecutorial conduct, improper expert-testimony treatment, and ineffective assistance of counsel, and requested relief under Massachusetts General Laws chapter 278, section 33E.
STANDARD OF REVIEW	Unpreserved instructional and prosecutorial-misconduct claims were reviewed for a substantial likelihood of a miscarriage of justice. Preserved evidentiary claims were reviewed for error and, if error existed, prejudice. The ineffective-assistance claims were evaluated in relation to the alleged underlying trial errors. The court independently reviewed the entire record under Mass. Gen. Laws ch. 278, § 33E.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Massachusetts Supreme Judicial Court.
PARTIES	Rolando Rodriguez v. Commonwealth

TOPICS

jury instructions burden of proof instructions expert testimony criminal procedure
prosecutorial misconduct

PRACTICE AREAS

criminal procedure criminal law evidence jury instructions ineffective assistance of counsel
prosecutorial misconduct

QUESTIONS PRESENTED

1. Whether the jury instructions on the presumption of innocence and evaluation of expert testimony improperly shifted the burden of proof.
2. Whether the prosecutor elicited inadmissible consciousness-of-guilt evidence or otherwise failed to satisfy the applicable standard for expert testimony during cross-examination of the defense expert.
3. Whether the prosecutor improperly assumed facts not in evidence or argued facts and inferences not supported by the evidence.
4. Whether the prosecutor improperly appealed to juror sympathy by referring to the victim's husband and children.
5. Whether trial counsel was constitutionally ineffective for failing to object to or move to strike challenged instructions and prosecutorial statements or for failing to request curative instructions.
6. Whether the court should exercise its extraordinary authority under Mass. Gen. Laws ch. 278, § 33E, to order a new trial or reduce the murder conviction to a lesser degree of guilt.

HOLDINGS

1. A jury instruction that must be read as a whole adequately conveys that the presumption of innocence continues unless and until the Commonwealth proves every element beyond a reasonable doubt, even if some wording suggesting that the presumption may begin to disappear when evidence is introduced is not preferred.
2. An instruction that permits the jury to rely on an expert opinion based on assumed facts only if the jury finds those facts proven does not improperly shift the burden of proof when the charge as a whole repeatedly places the burden of proving specific intent on the Commonwealth.
3. On cross-examination of an opposing expert, hypothetical questions using 'consistent with' and 'could have' language are not inadmissible merely because they do not expressly ask for an opinion to a reasonable degree of medical certainty.
4. There was no reversible error where the prosecutor abandoned a question implicating consciousness-of-guilt evidence before the expert answered and the judge properly instructed the jury on the limited use of such evidence.
5. A prosecutor may argue facts in evidence and reasonable inferences from them, including that a baseball cap served as a disguise and that a bag was associated with the robbery, when the evidence supports

those inferences.

6. A prosecutor may provide limited background about the victim and refer to the victim's family to humanize the proceedings and set the scene, so long as the references are not excessive or the focal point of the argument.
7. An ineffective-assistance claim based solely on counsel's failure to object to conduct that was not erroneous cannot succeed.
8. After reviewing the entire record, the court found no basis to order a new trial or reduce the murder conviction to a lesser degree of guilt in the interests of justice.

KEY QUOTATIONS

“Error in a charge is determined by reading the charge as a whole, and not by scrutinizing bits and pieces removed from their context.” (559)

“The concept of presumption of innocence means exactly what it says.” (560)

“The burden remains always on the Commonwealth to prove beyond a reasonable doubt the essential elements” (562)

“Prosecutors must limit the scope of their arguments to facts in evidence and inferences that may be reasonably drawn from the evidence.” (565)

“We conclude that none of Rodriguez’s claims on appeal warrants reversal.” (568)

FACTUAL BACKGROUND

Kenia Melo was fatally stabbed during an armed robbery at the convenience store she owned and operated in Chelsea. Witnesses saw a man enter the store, struggle with Melo, take money from the register, and flee; evidence connected Rodriguez to a baseball cap, knife, and bag found at or associated with the crime scene. Rodriguez admitted involvement in the robbery but claimed that heavy use of crack cocaine, marijuana, and alcohol left him unable to remember the incident or form the specific intent to kill or rob. A defense forensic psychologist testified that the claimed substance use would make it extremely unlikely that Rodriguez could form the required specific intent.

PROCEDURAL HISTORY

Following a jury trial, Rodriguez was convicted of felony-murder in the first degree and armed robbery. The trial judge later vacated the armed-robbery conviction and sentence as duplicative of the felony-murder conviction. The Supreme Judicial Court affirmed the murder conviction and the order denying the motion for a new trial, and declined to order a new trial or reduce the murder conviction under section 33E.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Fowler, 431 Mass. 30, 31 (2000)
- Commonwealth v. Gunter, 427 Mass. 259, 266-267 (1998)
- Commonwealth v. Torres, 420 Mass. 479, 483-484 (1995)
- Commonwealth v. Grant, 418 Mass. 76, 85 (1994)
- Commonwealth v. Sinnott, 399 Mass. 863, 878 (1987)
- Commonwealth v. Martorano, 355 Mass. 790 (1969)
- Commonwealth v. Powers, 294 Mass. 59, 63-64 (1936)
- Commonwealth v. Kane, 19 Mass. App. Ct. 129, 139 (1984)
- Commonwealth v. Richardson, 423 Mass. 180, 185 (1996)
- Commonwealth v. Taylor, 327 Mass. 641, 649 (1951)
- Commonwealth v. Jaime, 433 Mass. 575, 577 (2001)
- Commonwealth v. Nadworny, 396 Mass. 342, 359 (1985), cert. denied, 477 U.S. 904 (1986)
- Commonwealth v. Squailia, 429 Mass. 101, 105 (1999)
- Commonwealth v. Hunter, 427 Mass. 651, 655 (1998)
- Commonwealth v. Ferguson, 365 Mass. 1, 11 (1974)
- Goldman v. Mahony, 354 Mass. 705, 711 (1968)
- Commonwealth v. Good, 409 Mass. 612, 623 (1991)
- Commonwealth v. Lamrini, 392 Mass. 427, 432 (1984)
- Commonwealth v. Bourgeois, 391 Mass. 869, 885 (1984)
- Commonwealth v. Degro, 432 Mass. 319, 323, 326-328 (2000)
- Commonwealth v. Santiago, 425 Mass. 491, 495 (1997), S.C., 427 Mass. 298, and 428 Mass. 39, cert. denied, 525 U.S. 1003 (1998)
- Commonwealth v. Sanna, 424 Mass. 92, 107-108 (1997)
- Commonwealth v. Murphy, 426 Mass. 395, 404 (1998)
- Commonwealth v. Waite, 422 Mass. 792, 807 (1996)