

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Senior

433 Mass. 453 (2001) · Decided March 13, 2001

SUMMARY

The Massachusetts Supreme Judicial Court affirmed Robert B. Senior’s conviction for vehicular homicide. The court held that hospital personnel who performed a blood alcohol test at defense counsel’s request were not agents of the defense team, that retrograde extrapolation evidence was sufficiently reliable for admission, and that the defendant’s failure to answer one question after waiving Miranda rights did not invoke his right to remain silent.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Ireland, J.
JURISDICTION	Massachusetts
DECIDED	March 13, 2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant was convicted of vehicular homicide in the Superior Court and appealed directly to the Massachusetts Supreme Judicial Court. He challenged the admission of hospital blood-alcohol-test results, the admission of retrograde-extrapolation expert testimony, the denial of a motion in limine, and prosecutorial comments concerning his post-Miranda silence.
STANDARD OF REVIEW	The court reviewed the admission of retrograde-extrapolation evidence for abuse of discretion, accepted the motion judge's subsidiary factual findings absent clear error, afforded substantial deference to ultimate findings and legal conclusions, and independently reviewed the application of constitutional principles to the facts found.
PRECEDENTIAL VALUE	Published precedential opinion of the Massachusetts Supreme Judicial Court
PARTIES	Robert B. Senior v. Commonwealth

TOPICS

- expert testimony
- daubert standard
- miranda rights
- evidence
- appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

evidence

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the Commonwealth improperly obtained and introduced the defendant's hospital blood-alcohol test results because the hospital personnel were agents of the defendant or his attorney, or because the records were protected by privilege or constitutional rights concerning preparation of the defense.
2. Whether retrograde extrapolation evidence estimating the defendant's blood-alcohol level at the time of the collision satisfied the reliability requirements of Daubert and Commonwealth v. Lanigan.
3. Whether the defendant's failure to answer one police question after receiving Miranda warnings constituted an invocation of his right to remain silent, making the evidence and the prosecutor's comment impermissible.

HOLDINGS

1. Hospital personnel were not agents of the defendant or his attorney because the record did not show their consent to act on the defense's behalf and subject to its control. The attorney-client privilege and the grand-jury-subpoena protection for defense agents therefore did not apply, and the Commonwealth's subpoena and use of the records did not warrant dismissal of the indictment.
2. Retrograde extrapolation evidence was sufficiently reliable and was properly admitted. General acceptance is relevant but not essential; the controlling inquiry is the reliability of the underlying scientific theory or process, which may be shown through testing, peer review, publication, general acceptance, or other evidence of validity.
3. The defendant did not invoke his right to remain silent. After knowingly and voluntarily waiving his Miranda rights and answering questions, his failure to answer one particular question, while continuing to cooperate and answer other questions, was not an affirmative indication that he was invoking the right. The evidence and prosecutor's comment were therefore permissible.

KEY QUOTATIONS

"The ultimate test ... is the reliability of the theory or process underlying the expert's testimony." (458-459)

"a defendant has not only the right to remain silent from the beginning but also a continuing right to cut off, at any time, any questioning that does take place." (463)

FACTUAL BACKGROUND

After consuming four to six beers over approximately two hours, Robert B. Senior drove faster than the speed limit and collided with a stalled vehicle, killing its driver. Police observed signs of intoxication, administered Miranda warnings, and questioned Senior; he answered most questions but did not respond when asked where he had been drinking. Later that night, at his attorney's request, hospital personnel performed a blood-alcohol test showing a level of .091, and the Commonwealth's expert used retrograde extrapolation to estimate a level between .099 and .148 at the time of the collision.

PROCEDURAL HISTORY

After the defendant's conviction and sentence of three to five years in prison, he filed a timely appeal. The Supreme Judicial Court granted direct appellate review. The court affirmed the judgment of conviction, rejecting each asserted error. A single justice of the Appeals Court had released the defendant and stayed the sentence pending appeal; the Commonwealth's challenge to that order was denied by a single justice of the Supreme Judicial Court.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Rosenberg, 410 Mass. 347, 354 (1991)
- Kirkpatrick v. Boston Mutual Life Insurance Co., 393 Mass. 640, 645 (1985)
- Matter of a Grand Jury Investigation, 407 Mass. 916, 918-919 (1990)
- Commonwealth v. Dube, 413 Mass. 570, 572 n.3 (1992)
- Purcell v. District Attorney for the Suffolk District, 424 Mass. 109, 115 (1997)
- Matter of a John Doe Grand Jury Investigation, 408 Mass. 480, 482 (1990)
- Commonwealth v. Penta, 423 Mass. 546, 548-550 (1996)
- Commonwealth v. Souza, 397 Mass. 236, 239-243 (1986)
- Commonwealth v. Cavanaugh, 371 Mass. 46, 50-57 (1976)
- Washington v. Texas, 388 U.S. 14, 17-23 (1967)
- Schwartz v. Goldstein, 400 Mass. 152, 153 (1987)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)
- Commonwealth v. Lanigan, 419 Mass. 15, 24-26 (1994)
- Frye v. United States, 283 F. 1013 (D.C. Cir. 1923)
- Commonwealth v. Cumin, 409 Mass. 218, 222 (1991)
- Commonwealth v. Sands, 424 Mass. 184, 185-186 & n.1 (1997)
- Canavan's Case, 432 Mass. 304, 310, 312 (2000)
- Douillard v. LMR, Inc., 433 Mass. 162, 163 (2001)
- Ullman v. Overnight Transportation Co., 563 F.2d 152, 152-156 (5th Cir. 1977)
- People v. Latto, 304 Ill. App. 3d 791, 803 (1999)
- Rice v. Merchants National Bank, 213 Ill. App. 3d 790, 797 (1991)
- State v. Jensen, 482 N.W.2d 238, 240 (Minn. Ct. App. 1992)
- People v. MacDonald, 227 A.D.2d 672, 674-675 (N.Y. App. Div. 1996)
- State v. Catoe, 78 N.C. App. 167, 169-170 (1985)
- State v. Fade, 452 N.W.2d 779, 782 (S.D. 1990)
- State v. McDonald, 421 N.W.2d 492, 494 (S.D. 1988)

- Hartman v. State, 2 S.W.3d 490, 494 (Tex. Ct. App. 1999)
- State v. Bradley, 578 P.2d 1267, 1269 (Utah 1978)
- State v. Dumont, 146 Vt. 252, 254-255 (1985)
- State v. Carter, 142 Vt. 588, 591-593 (1983)
- Kempe v. Domestic Corp., 866 F. Supp. 817, 820 (D. Del. 1994)
- McGrew v. Pearlman, 304 Ill. App. 3d 697, 704-706 (1999)
- Reuter v. Korb, 258 Ill. App. 3d 142, 154-157 (1993)
- Commonwealth v. Zugay, 745 A.2d 639, 646 (Pa. Super. Ct. 2000)
- State v. Wolf, 605 N.W.2d 381, 385 (Minn. 2000)
- Commonwealth v. Petrovich, 538 Pa. 369 (1994)
- Commonwealth v. Freeman, 430 Mass. 111, 115 (1999)
- Commonwealth v. Hussey (No. 1), 410 Mass. 664, 671, cert. denied, 502 U.S. 988 (1991)
- Commonwealth v. Harris, 11 Mass. App. Ct. 165, 173 (1981)
- Commonwealth v. Bradshaw, 385 Mass. 244, 265 (1982)
- Commonwealth v. Pennellatore, 392 Mass. 382, 387 (1984)
- Commonwealth v. Roberts, 407 Mass. 731, 734 (1990)
- Commonwealth v. Ewing, 30 Mass. App. Ct. 285, 287 (1991)
- Commonwealth v. James, 427 Mass. 312, 314 (1998)
- United States v. Goldman, 563 F.2d 501, 503 (1st Cir. 1977), cert. denied, 434 U.S. 1067 (1978)
- Vitali v. United States, 383 F.2d 121, 123 (1st Cir. 1967)
- Commonwealth v. Magee, 423 Mass. 381, 384 (1996)
- Commonwealth v. Mello, 420 Mass. 375, 381 n.8 (1995)
- Commonwealth v. MacKenzie, 413 Mass. 498, 513 (1992)
- Commonwealth v. Thompson, 431 Mass. 108, 118 (2000)
- Commonwealth v. Senior, 429 Mass. 1021 (1999)