

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. Dorazio

472 Mass. 535 (2015) · No. SJC-11765 · Decided September 2, 2015

SUMMARY

The Massachusetts Supreme Judicial Court reviewed Herbert Dorazio’s convictions for rape of a child by force and assault with intent to rape. The court considered prejudicial joinder, admission of prior-misconduct evidence concerning an incident for which Dorazio had been acquitted, mistrial, and ineffective assistance of counsel. It reversed the convictions, addressing the evidentiary and constitutional issues including collateral estoppel and double jeopardy.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Hines, J.; Gants, C.J.; Spina, J.; Cordy, J.; Botsford, J.; Duffly, J.; Lenk, J.
JURISDICTION	Massachusetts
DECIDED	September 2, 2015
DOCKET	SJC-11765
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The defendant sought further appellate review of convictions for rape of a child by force and assault with intent to rape. The Supreme Judicial Court granted further appellate review after the Appeals Court affirmed the convictions.
STANDARD OF REVIEW	Denial of relief from prejudicial joinder was reviewed for abuse of discretion. Admission of prior-misconduct evidence was reviewed for prejudicial error because the evidentiary objection was preserved. The unpreserved constitutional claim was reviewed for a substantial risk of a miscarriage of justice.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Herbert Dorazio v. Commonwealth

TOPICS

- criminal procedure
- evidence
- double jeopardy
- due process
- appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

evidence

constitutional law

appellate practice

QUESTIONS PRESENTED

1. Whether the indictments involving Susan and Jane were improperly joined for trial.
2. Whether evidence concerning the prior alleged sexual touching of J.D., for which Dorazio had been acquitted, was admissible under ordinary evidentiary principles to rebut accident, mistake, or lack of intent.
3. Whether article 12 of the Massachusetts Declaration of Rights and its collateral-estoppel protections barred admission of prior-bad-act evidence concerning conduct underlying a prior acquittal in a subsequent criminal prosecution.
4. Whether admission of the acquittal evidence created a substantial risk of a miscarriage of justice requiring reversal.

HOLDINGS

1. The trial judge did not abuse his discretion in denying relief from prejudicial joinder because the offenses involved sufficiently similar complainants, circumstances, and methods and were related by a common pattern of conduct.
2. The evidence concerning the J.D. incident was relevant and admissible under existing evidentiary law to show intent and absence of accident or mistake, subject to an appropriate limiting instruction.
3. Under the collateral-estoppel protections necessarily embraced by article 12 of the Massachusetts Declaration of Rights, evidence of prior-bad-act conduct for which the defendant was acquitted must be excluded in a subsequent criminal proceeding involving alleged unlawful sexual conduct with minors.
4. Admission of the acquittal evidence created a substantial risk of a miscarriage of justice and required reversal of the convictions.

KEY QUOTATIONS

“We find the thoughtful and extensive considerations enunciated in the dissenting opinion in Dowling to be instructive, and we conclude that the collateral estoppel protections necessarily embraced by art. 12 warrant the exclusion of the acquittal evidence in the circumstances of this case, a subsequent criminal proceeding involving alleged unlawful sexual conduct with minors.” (at 555-556)

“Our holding is limited to prior bad act evidence for which a defendant was acquitted.” (at 556)

“We are constrained to reverse the defendant's convictions.” (at 557)

FACTUAL BACKGROUND

Dorazio was accused of sexually assaulting two neighborhood girls, Susan and Jane, at his home in the mid-to-late 1990s. The Commonwealth also introduced evidence concerning a 1998 restaurant incident involving J.D., a six-year-old girl, for which Dorazio had previously been acquitted. The trial judge admitted the acquittal

evidence for the limited purpose of proving intent and absence of accident or mistake, and the jury convicted Dorazio of the offenses involving Susan and Jane.

PROCEDURAL HISTORY

A Superior Court jury convicted Dorazio in July 2010 of rape of a child, Susan, by force, and assault with intent to rape Jane, while acquitting him of indecent assault and battery on Jane. The trial judge denied Dorazio's motion for a new trial. The Appeals Court affirmed the convictions and consolidated the direct appeal with the appeal from denial of the new-trial motion. The Supreme Judicial Court granted further appellate review and reversed the convictions, remanding for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The convictions were reversed and the cases were remanded for a new trial. On retrial, evidence of prior-bad-act conduct for which the defendant was acquitted must be excluded under article 12 in the circumstances identified by the court.

CASES CITED

- Commonwealth v. Walker, 442 Mass. 185, 199 (2004)
- Commonwealth v. Gaynor, 443 Mass. 245, 260-263 (2005)
- Commonwealth v. Pillai, 445 Mass. 175, 181-182 (2005)
- Commonwealth v. Feijoo, 419 Mass. 486, 489 (1995)
- Commonwealth v. Montez, 450 Mass. 736, 744, 746 (2008)
- Commonwealth v. Barrett, 418 Mass. 788, 793-795 (1994)
- Commonwealth v. Rosenthal, 432 Mass. 124, 126-127 (2000)
- Huddleston v. United States, 485 U.S. 681, 689 (1988)
- Commonwealth v. Francis, 432 Mass. 353, 359 & n.5 (2000)
- Dowling v. United States, 493 U.S. 342, 348-354 (1990)
- Krochta v. Commonwealth, 429 Mass. 711, 718 n.14 (1999)
- Commonwealth v. Forte, 423 Mass. 672, 674 (1996)
- Kimbroughtillery v. Commonwealth, 471 Mass. 507, 510-511 (2015)
- Commonwealth v. Benson, 389 Mass. 473, 478-481, cert. denied, 464 U.S. 915 (1983)
- Ashe v. Swenson, 397 U.S. 436, 433-444 (1970)
- Commonwealth v. Lopez, 383 Mass. 497, 499 (1981)
- Commonwealth v. Scala, 380 Mass. 500, 503 (1980)
- Sealfon v. United States, 332 U.S. 575, 578-579 (1948)
- Commonwealth v. Stephens, 451 Mass. 370, 379-380 (2008)

- United States v. Cioffi, 487 F.2d 492, 498 (2d Cir. 1973), cert. denied, 416 U.S. 995 (1974)
- Commonwealth v. Cerveney, 387 Mass. 280, 285 (1982)
- Commonwealth v. DeCillis, 41 Mass. App. Ct. 312, 315-316 (1996)
- Arizona v. Evans, 514 U.S. 1, 8 (1995)
- Commonwealth v. Jackson, 419 Mass. 716, 719 (1995)
- Commonwealth v. McCoy, 456 Mass. 838, 839 (2010)
- Commonwealth v. Aviles, 461 Mass. 60, 61 n.1 (2011)
- Commonwealth v. Barboza, 76 Mass. App. Ct. 241, 243 n.6 (2010)
- Commonwealth v. Dorazio, 85 Mass. App. Ct. 1127 (2014)

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