

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. Weichell

446 Mass. 785 (2006) · Decided May 22, 2006

SUMMARY

The Massachusetts Supreme Judicial Court reviews the grant of a defendant’s second motion for a new trial based on alleged newly discovered evidence, including a purported confession letter and statements by another individual. The court holds that the defendant failed to establish that the evidence was not reasonably discoverable earlier and rejects the motion judge’s creation of a fear- or coercion-based exception to the reasonable-diligence requirement. The order granting a new trial is vacated.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Greaney, J.
JURISDICTION	Massachusetts
DECIDED	May 22, 2006
DISPOSITION	vacated
PROCEDURAL POSTURE	The Commonwealth appealed from an order granting the defendant's second motion for a new trial based on alleged newly discovered evidence and ineffective assistance of counsel.
STANDARD OF REVIEW	The grant or denial of a motion for a new trial is reviewed for significant error of law or abuse of discretion. When the motion judge did not preside at trial, the appellate court defers to the judge's credibility determinations but regards itself as in as good a position as the motion judge to assess the trial record.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Commonwealth v. Frederick Weichell

TOPICS

- post-conviction relief
- criminal procedure
- evidence
- appellate procedure
- hearsay

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the purported confession letter and alleged verbal confessions were newly discovered evidence when the defendant or counsel could have uncovered them through reasonable diligence before trial or before the first motion for a new trial.
2. Whether fear, coercion, or witness intimidation created an exception to the reasonable-diligence requirement for newly discovered evidence.
3. Whether Barrett's purported statements satisfied the corroboration requirement for admission as statements against penal interest.
4. Whether the motion judge properly granted a new trial based on the alleged newly discovered evidence.

HOLDINGS

1. Fear of intimidation and threats, without a recognized psychological syndrome or other mental impairment preventing the defendant from pursuing potentially exculpatory evidence, does not create an exception to the requirement that newly discovered evidence could not reasonably have been discovered earlier.
2. The purported confession letter and Barrett's alleged statements to Robb were not newly discovered evidence because the defendant or his counsel could reasonably have discovered them before the defendant's first motion for a new trial.
3. Barrett's statements were inadmissible because, although the declarant was unavailable and the statements were sufficiently against penal interest, they were not corroborated by circumstances clearly indicating their trustworthiness.

KEY QUOTATIONS

"A hard choice is not the same as no choice." (801)

"The statements themselves provided no detail toward exculpating the defendant" (806)

FACTUAL BACKGROUND

Frederick Weichell was convicted of murdering Robert W. LaMonica, who was shot in a Braintree parking lot on May 31, 1980. The prosecution relied principally on eyewitness John Foley's identification of Weichell as the fleeing shooter, along with motive evidence and evidence suggesting consciousness of guilt; Weichell presented an alibi. Years later, Weichell sought a new trial based on a 1982 letter in which Thomas Barrett purportedly confessed to the murder and on alleged statements by Barrett to Sherry Robb. The motion judge credited much of the defense evidence but the Supreme Judicial Court concluded that the evidence was reasonably discoverable earlier and that Barrett's statements lacked sufficient corroboration to be admissible.

PROCEDURAL HISTORY

Weichell was convicted by a jury of murder in the first degree, and the Supreme Judicial Court affirmed the conviction in 1983. His first motion for a new trial, filed in 1991, was denied without a hearing, and a single justice denied gatekeeper permission to appeal. In 2002, Weichell filed a second motion for a new trial based principally on a purported confession letter and statements by Thomas Barrett. A judge who had not presided at trial held an evidentiary hearing and granted a new trial. The Supreme Judicial Court vacated that order and directed entry of an order denying the motion.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The order allowing the defendant's motion for a new trial was vacated, and a new order was directed to enter denying the motion.

CASES CITED

- Commonwealth v. Weichell, 390 Mass. 62 (1983), cert. denied, 465 U.S. 1032 (1984)
- Commonwealth v. Grace, 397 Mass. 303, 305-307 (1986)
- Commonwealth v. Pike, 431 Mass. 212, 222 (2000)
- Commonwealth v. Lopez, 433 Mass. 406, 416 (2001)
- Commonwealth v. Doherty, 394 Mass. 341, 346-347 (1985)
- Commonwealth v. Drew, 397 Mass. 65, 73, 75 n.10, 76-78 (1986)
- United States v. Thomas, 571 F.2d 285, 288 (5th Cir. 1978)
- Commonwealth v. Tague, 434 Mass. 510, 516-517 (2001), cert. denied, 534 U.S. 1146 (2002)
- Commonwealth v. Carr, 373 Mass. 617, 623-624 (1977)
- Commonwealth v. Galloway, 404 Mass. 204, 208 (1989)
- Commonwealth v. DiToro, 51 Mass. App. Ct. 191, 199 (2001)
- Commonwealth v. Marple, 26 Mass. App. Ct. 150, 159 (1988)
- United States v. Martinez-Salazar, 528 U.S. 304, 315 (2000)