

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. O'Connell

438 Mass. 658 (2003) · Decided February 12, 2003

SUMMARY

The Massachusetts Supreme Judicial Court affirmed Ralph M. O’Connell’s convictions for forgery, uttering, and larceny over \$250 arising from five checks drawn on his father’s bank accounts. The court held that the evidence was sufficient for the jury to determine that O’Connell forged the signatures and acted with intent to defraud, and that expert handwriting testimony and the account holder’s testimony were not required. The court also rejected challenges to the admission of signature exemplars, bank-procedure evidence, handwriting testimony, and the prosecutor’s opening statement.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Spina, J.
JURISDICTION	Massachusetts
DECIDED	February 12, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed convictions for five counts each of forgery, uttering, and larceny over \$250. The Appeals Court reversed for insufficient evidence, and the Supreme Judicial Court granted the Commonwealth's application for further appellate review.
STANDARD OF REVIEW	For a motion for a required finding of not guilty at the close of the Commonwealth's evidence, the court views the evidence in the light most favorable to the prosecution and asks whether any rational trier of fact could have found the essential elements beyond a reasonable doubt. Unpreserved prosecutorial-opening-statement claims are reviewed for a substantial risk of a miscarriage of justice. Evidentiary qualification and admission decisions are reviewed for abuse of discretion or clear error, as applicable.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Ralph M. O'Connell v. Commonwealth

TOPICS

criminal procedure

evidence

standard of review

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preservation of error

PRACTICE AREAS

criminal law

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QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the convictions for forgery, uttering, and larceny over \$250.
2. Whether the Commonwealth was required to present the testimony of the person whose signature was allegedly forged or expert handwriting testimony to prove forgery.
3. Whether the evidence was sufficient to establish intent to injure or defraud.
4. Whether lack of authority was an element of the charged offenses or an affirmative defense that was unavailable because the defendant failed to comply with the notice requirement.
5. Whether the admission of portions of the bank affidavit and related testimony was erroneous hearsay or unduly prejudicial.
6. Whether a bank officer was properly permitted to offer an opinion comparing the disputed signatures with the father's signature.
7. Whether the prosecutor's opening statement created a substantial risk of a miscarriage of justice when the father did not testify.

HOLDINGS

1. The Commonwealth may prove forgery without testimony from the person whose signature was allegedly forged when the disputed instrument is admitted and other evidence permits the jury to determine authorship.
2. Expert handwriting testimony is not required to establish forgery when genuine specimens are before the jury for comparison.
3. Evidence sufficient to prove that the defendant forged the checks also supported findings that the checks were forged, that he knew or believed they were forged when he cashed them, and that he acted with intent to injure or defraud.
4. Lack of authority is not an essential element of forgery, uttering, or larceny as charged; authority may be asserted as a defense, but the defendant must timely provide the required notice, after which the Commonwealth bears the burden of proving absence of authority beyond a reasonable doubt.
5. The trial judge properly admitted the signatures on the bank document as exemplars for handwriting comparison and properly admitted testimony about the bank's recrediting procedure for the limited purpose of explaining the bank officials' actions.
6. A witness familiar with a person's handwriting may give an opinion about whether a disputed specimen was written by that person, and a bank officer's substantial experience comparing signatures may qualify the witness despite having seen the person sign only once.

7. The prosecutor's good-faith statement that the father would testify did not create a substantial risk of a miscarriage of justice when the father unexpectedly failed to appear, the jury was instructed that opening statements are not evidence, and the defendant requested neither a curative instruction nor a mistrial.

KEY QUOTATIONS

“whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt” (662)

“The Commonwealth did not need expert testimony to prove forgery.” (663)

“The Commonwealth need not show that the defendant intended to injure or defraud a particular person. It is sufficient that he intended to injure or defraud someone.” (664)

“Contrary to the defendant's assertion, lack of authority is not an essential element of any of the offenses for which the defendant was indicted.” (665)

FACTUAL BACKGROUND

In April 1998, Ralph M. O'Connell cashed five checks payable to himself and drawn on accounts belonging to his father at two banks. The checks bore purported maker signatures of his father, were endorsed by the defendant, and were supported by bank surveillance photographs showing the defendant cashing them. Afterward, the father complained to the banks, signed documents used in the banks' recrediting procedures, and the banks recredited the accounts; the father did not testify at trial.

PROCEDURAL HISTORY

The defendant was convicted in the trial court of offenses involving five checks drawn on his father's bank accounts. The Appeals Court, in a two-to-one decision, concluded that the evidence was insufficient and reversed the convictions. On further appellate review, the Supreme Judicial Court held that the evidence was sufficient and affirmed the convictions.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Latimore, 378 Mass. 671, 677 (1979)
- Jackson v. Virginia, 443 U.S. 307, 318-319 (1979)
- Commonwealth v. Boutwell, 129 Mass. 124, 124 (1880)
- Commonwealth v. Hutchinson, 1 Mass. 7, 8 (1804)
- Commonwealth v. O'Brien, 254 Mass. 86, 90 (1925)
- Levi v. Rubin, 241 Mass. 40, 41 (1922)
- Noyes v. Noyes, 224 Mass. 125, 130 (1916)
- Buker v. Melanson, 8 Mass. App. Ct. 325, 330 (1979)

- Commonwealth v. Analetto, 326 Mass. 115, 118-119 (1950)
- Commonwealth v. Segee, 218 Mass. 501, 504 (1914)
- Commonwealth v. Jones, 372 Mass. 403, 406 (1977)
- Commonwealth v. Kepper, 114 Mass. 278 (1873)
- Nunes v. Perry, 113 Mass. 274, 276 (1873)
- Wingate v. Emery Air Freight Corp., 385 Mass. 402, 406-407 (1982)
- Commonwealth v. Girouard, 436 Mass. 657, 669 (2002)
- Commonwealth v. Ryan, 355 Mass. 768, 770-771 (1969)
- Commonwealth v. Nefus, 135 Mass. 533 (1883)
- Richardson v. Newcomb, 21 Pick. 315, 317 (1838)
- Commonwealth v. Thomas, 429 Mass. 146, 157 (1999)
- First Nat'l Bank v. Hovey, 10 Mass. App. Ct. 715, 721 (1980)
- Stone & Webster Eng'g Corp. v. First Nat'l Bank & Trust Co., 345 Mass. 1, 9 (1962)