

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Sherman

451 Mass. 332 (2008) · Decided May 2, 2008

SUMMARY

The Massachusetts Supreme Judicial Court held that the defendant’s guilty pleas to rape and assault were intelligent and voluntary. The court concluded that his admissions during the plea colloquy sufficiently implied the sexual-intercourse element of rape and that procedural deviations during the colloquy did not warrant withdrawal of the pleas. The order granting a new trial was reversed.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Spina, J.
JURISDICTION	Massachusetts
DECIDED	May 2, 2008
DISPOSITION	reversed
PROCEDURAL POSTURE	The Commonwealth appealed from a Superior Court order granting the defendant's motion for a new trial and allowing withdrawal of his guilty pleas. The Appeals Court reversed, and the Supreme Judicial Court granted further appellate review.
STANDARD OF REVIEW	A motion for a new trial is reviewed for abuse of discretion or significant error of law. The Supreme Judicial Court reviewed the plea's intelligence based on the contemporaneous plea-hearing record, while the voluntariness issue was reviewed on the broader record.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court opinion; precedential.
PARTIES	Commonwealth v. Larry H. Sherman, Jr.

TOPICS

- plea bargaining
- post-conviction relief
- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- plea bargaining
- appellate procedure

QUESTIONS PRESENTED

1. Whether the defendant's guilty pleas were unintelligent because the plea-hearing admissions did not establish the sexual or unnatural sexual intercourse element of rape.
2. Whether the plea colloquy adequately established that the pleas were voluntary.
3. Whether the judge's failure to expressly determine that the pleas were voluntary and intelligent violated Mass. R. Crim. P. 12(a)(2).
4. Whether the clerk's announcement, rather than the judge's express statement, that the pleas were accepted violated Mass. R. Crim. P. 12(c)(5)(B).
5. Whether the judge's misstatement of the maximum sentence and failure to advise that the agreed sentence would not be exceeded required withdrawal of the pleas under Mass. R. Crim. P. 12(c)(2) or (3).

HOLDINGS

1. The guilty pleas were intelligent because the defendant's admissions that he forcibly raped the victim when she refused to have sex voluntarily, together with the surrounding facts he admitted, sufficiently established the sexual or unnatural sexual intercourse element of rape.
2. The pleas were voluntary because the judge conducted a sufficient inquiry into whether Sherman was under coercion, duress, or improper inducement.
3. An express verbal determination was not required; the judge's determination that the pleas were voluntary and intelligent could be inferred from the record, including acceptance of the pleas and imposition of the jointly recommended sentence.
4. The clerk's announcement that the court accepted the pleas did not require withdrawal of the pleas because the judge's silence while the clerk announced the decision, together with docket entry of the pleas, sufficiently reflected the judge's acceptance.
5. The judge's misstatement of the maximum sentence and failure to state that he would not exceed the agreed recommendation did not require withdrawal because Sherman received the agreed sentence and suffered no prejudice.

KEY QUOTATIONS

"A defendant must receive "real notice of the true nature" of the charge for which he intends to make a guilty plea." (451 Mass. at 335)

"Although the plea hearing in this case was by no means exemplary, the defendant's guilty pleas nevertheless were intelligent, and it was error to grant the defendant's motion to withdraw on the ground that it was not intelligent." (451 Mass. at 338)

"The determination can be implicit as long as the record supports a determination that the plea was voluntary and intelligent." (451 Mass. at 340)

FACTUAL BACKGROUND

Sherman was indicted for aggravated rape and assault with intent to commit murder and, following plea negotiations, pleaded guilty to rape and simple assault. At the plea hearing, the prosecutor recited facts that Sherman admitted, including that he forcibly raped the victim when she refused to have sex voluntarily, that she fled screaming, and that she was naked from the waist down. The judge explained the trial rights waived by a guilty plea, questioned Sherman about inducements and satisfaction with counsel, accepted the pleas, and imposed the agreed-upon sentence.

PROCEDURAL HISTORY

In 1993, Sherman pleaded guilty to rape and assault pursuant to a plea agreement and received a sentence of six to ten years, with the assault conviction placed on file and the sentence largely suspended. After his probation was revoked, he moved in 2003 for a new trial, arguing that his pleas were not intelligent or voluntary and that the plea colloquy violated Massachusetts Rule of Criminal Procedure 12. A Superior Court judge granted the motion on the ground that the pleas were not intelligent; the Appeals Court reversed; the Supreme Judicial Court affirmed the reversal and ordered entry of a new order denying the motion.

DISPOSITION

reversed

REMAND INSTRUCTIONS

Reverse the order granting the motion for a new trial and enter a new order denying the motion.

CASES CITED

- Commonwealth v. Huot, 380 Mass. 403, 406 (1980)
- Commonwealth v. Russin, 420 Mass. 309, 318 (1995)
- Commonwealth v. Martin, 427 Mass. 816, 817 (1998)
- Commonwealth v. Sullivan, 385 Mass. 497, 504, 509 (1982)
- Henderson v. Morgan, 426 U.S. 637, 645-646 (1976)
- Boykin v. Alabama, 395 U.S. 238, 242-243 (1969)
- Commonwealth v. Colantoni, 396 Mass. 672, 678-679 (1986)
- Commonwealth v. Correa, 43 Mass. App. Ct. 714, 717, 719 (1997)
- Commonwealth v. Foster, 368 Mass. 100, 107-108 nn.6-7 (1975)
- Commonwealth v. Nolan, 19 Mass. App. Ct. 491, 492, 496 (1985)
- Commonwealth v. Berrios, 447 Mass. 701, 708 (2006), cert. denied, 127 S. Ct. 2103 (2007)
- Commonwealth v. Fernandes, 390 Mass. 714, 719 (1984)
- Commonwealth v. Quinones, 414 Mass. 423, 434-435 (1993)
- Commonwealth v. Catanzaro, 441 Mass. 46, 51 n.8 (2004)
- Commonwealth v. Boswell, 374 Mass. 263, 267 (1978)
- Commonwealth v. Mottola, 10 Mass. App. Ct. 775, 782 (1980)

- Commonwealth v. Hiskin, 68 Mass. App. Ct. 633, 642-643 (2007)
- Commonwealth v. Glines, 40 Mass. App. Ct. 95, 99 (1996)
- Commonwealth v. Clerico, 35 Mass. App. Ct. 407, 412 (1993)
- Commonwealth v. Sherman, 68 Mass. App. Ct. 797, 800, 808-810 (2007)
- Commonwealth v. Foster, 368 Mass. 100, 108 nn.6-7 (1975)
- Commonwealth v. Jones, 60 Mass. App. Ct. 88, 91 (2003)
- Commonwealth v. Pixley, 48 Mass. App. Ct. 917, 918 (2000)
- Commonwealth v. Barry, 51 Mass. App. Ct. 9, 10 (2001)
- Commonwealth v. Brattman, 10 Mass. App. Ct. 579, 583-584 (1980)
- Commonwealth v. Andrews, 49 Mass. App. Ct. 201, 204 (2000)
- Commonwealth v. Gallant, 373 Mass. 577, 584 (1977)