

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. Mercado

452 Mass. 662 (2008) · Decided November 26, 2008

SUMMARY

The Massachusetts Supreme Judicial Court affirmed Phillipe Mercado’s first-degree murder conviction and the orders denying his motions for a new trial and to reduce the verdict. The court held that counsel’s admission of evidence concerning Mercado’s history of violence was consistent with a reasonable strategy supporting a lack-of-criminal-responsibility defense, and that the provocation instruction was not erroneous. The court also upheld the denial of a new-trial motion without an evidentiary hearing and declined to exercise its power under G. L. c. 278, § 33E.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Cowin, J.
JURISDICTION	Massachusetts
DECIDED	November 26, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed from his first-degree murder conviction and from orders denying his motions for a new trial and to reduce the verdict. He also requested that the Supreme Judicial Court exercise its extraordinary power under G. L. c. 278, § 33E, to reduce the verdict to manslaughter.
STANDARD OF REVIEW	The court reviewed denial of the motion for a new trial for abuse of discretion or other error of law, giving special deference because the motion judge was also the trial judge. Because the conviction was for murder in the first degree, the ineffective-assistance claim was reviewed under the more favorable substantial-likelihood-of-a-miscarriage-of-justice standard required by G. L. c. 278, § 33E. The provocation-instruction claim was reviewed under the same standard because the instruction was requested by the defendant. The decision whether to hold an evidentiary hearing on a new-trial motion was reviewed for abuse of discretion, with substantial deference to the motion judge.

PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court opinion; precedential.
PARTIES	Phillipe Mercado v. Commonwealth

TOPICS

criminal procedure ineffective assistance evidence appellate procedure post-conviction relief

PRACTICE AREAS

criminal law criminal procedure appellate review post-conviction relief evidence

QUESTIONS PRESENTED

1. Whether defense counsel was ineffective for failing to object to, and in some instances introducing, evidence of Mercado's prior violent acts and mental-health history.
2. Whether the jury instruction distinguishing mere words from statements conveying information sufficient to constitute reasonable provocation erroneously defined heat of passion or reasonable provocation.
3. Whether the motion judge erred by denying Mercado's motion for a new trial without holding an evidentiary hearing.
4. Whether the Supreme Judicial Court should exercise its extraordinary authority under G. L. c. 278, § 33E, to reduce the first-degree murder verdict to manslaughter or order a new trial.

HOLDINGS

1. Defense counsel's decisions to permit or introduce evidence of Mercado's prior violent acts and mental-health history did not constitute ineffective assistance because they were part of a deliberate strategy to connect his mental illness, medication status, and inability to control violent behavior to the lack-of-criminal-responsibility defense, and the strategy was not manifestly unreasonable when made.
2. The provocation instruction was not erroneous. It properly distinguished mere insulting or abusive words, which ordinarily do not constitute reasonable provocation, from statements conveying information that could cause a reasonable person to lose self-control and actually cause the defendant to do so. In any event, the evidence did not support a provocation instruction because there was no sudden discovery of infidelity and there was a cooling-off period.
3. The motion judge did not abuse her discretion by ruling on Mercado's motion for a new trial without an evidentiary hearing because the motion and affidavits did not raise a substantial issue, and the judge's recollection of the trial and defense strategy enabled her to resolve the claim without supplemental testimony.
4. After reviewing the entire record, the court found no reason to exercise its extraordinary power under G. L. c. 278, § 33E, to reduce the murder verdict or order a new trial.

KEY QUOTATIONS

“The question is not whether defense counsel could have succeeded in excluding the evidence, but whether he wanted the evidence excluded.” (667)

“If defense counsel determined that the evidence should be admitted for some reason, and if that were not a manifestly unreasonable strategy, there is no ineffective assistance of counsel.” (667)

“Mere words, no matter how insulting or abusive, standing alone do not constitute reasonable provocation; however, the existence of sufficient provocation is not foreclosed because a defendant learns of a fact from a statement rather than from a personal observation.” (672)

“An evidentiary hearing to supplement the judge’s memory was not necessary.” (673)

FACTUAL BACKGROUND

Mercado and his wife were experiencing marital difficulties, and Mercado suspected that she was having an affair. On the day of the killing, he saw his wife with another man and later argued with her after she told him she had been seeing another man and wanted him to leave their home. Mercado took a kitchen knife to his sister-in-law's apartment and stabbed his wife to death in front of their children and other witnesses. Mercado presented a lack-of-criminal-responsibility defense supported by evidence of psychotic disorder, medication use, and prior violent or assaultive behavior; the Commonwealth's expert opined that he was criminally responsible.

PROCEDURAL HISTORY

A Superior Court jury convicted Mercado of murder in the first degree on a theory of deliberate premeditation. The trial judge denied Mercado's motion for a new trial without an evidentiary hearing and denied his motion to reduce the verdict. The Supreme Judicial Court affirmed the conviction and both orders and declined to exercise its § 33E authority.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Espada, 450 Mass. 687, 695, 697 (2008)
- Commonwealth v. Wright, 411 Mass. 678, 681-682 (1992)
- Commonwealth v. MacKenzie, 413 Mass. 498, 517 (1992)
- Commonwealth v. Saferian, 366 Mass. 89, 96 (1974)
- Commonwealth v. Coonan, 428 Mass. 823, 827 (1999)
- Commonwealth v. Martin, 427 Mass. 816, 822 (1998)
- Commonwealth v. Satterfield, 373 Mass. 109, 111 (1977)
- Commonwealth v. Carmona, 428 Mass. 268, 275-276 & n.7 (1998)
- Commonwealth v. Schnopps, 383 Mass. 178, 180-182 (1981), S.C., 390 Mass. 722 (1984)

- Commonwealth v. Anderson, 396 Mass. 306, 314 (1985)
- Commonwealth v. Bermudez, 370 Mass. 438, 440-442 (1976)
- Commonwealth v. Benjamin, 430 Mass. 673, 680 (2000)
- Commonwealth v. Andrade, 422 Mass. 236, 237-238 (1996)
- Commonwealth v. Ruddock, 428 Mass. 288, 291-292 (1998)
- Commonwealth v. Wallis, 440 Mass. 589, 596 (2003)
- Blaisdell v. Commonwealth, 372 Mass. 753, 764-769 (1977)
- Commonwealth v. Harvey, 397 Mass. 803, 808 (1986)
- Commonwealth v. Lamb, 365 Mass. 265, 270 (1974), S.C., 372 Mass. 17 (1977)
- Commonwealth v. Francis, 450 Mass. 132, 138-139 (2007)
- Commonwealth v. Serino, 436 Mass. 408, 412 n.2 (2002)
- Commonwealth v. Fanelli, 412 Mass. 497, 501 (1992)
- Commonwealth v. McHoul, 352 Mass. 544, 546-547 (1967)