

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. Aviles

461 Mass. 60 (2011) · No. SJC-10846 · Decided December 6, 2011

SUMMARY

The Supreme Judicial Court of Massachusetts affirmed Angel Aviles's convictions for rape of a child and indecent assault and battery on a child under fourteen. The court held that testimony concerning the victim's later disclosure was not admissible under the first complaint doctrine but was independently admissible to rebut the defense theory of fabrication. The court also modified appellate review of first complaint evidentiary rulings, adopting an abuse of discretion standard, and addressed admission of related grand jury testimony under verbal completeness.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Spina, J.; Ireland, C.J.; Cordy, J.; Botsford, J.; Gants, J.
JURISDICTION	Massachusetts
DECIDED	December 6, 2011
DOCKET	SJC-10846
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed convictions entered after a Superior Court jury trial. A divided Appeals Court panel affirmed, and the Supreme Judicial Court granted further appellate review.
STANDARD OF REVIEW	The court reviewed the preserved evidentiary challenge for prejudicial error and reviewed the trial judge's determination concerning the admissibility of first complaint evidence for abuse of discretion. Unpreserved evidentiary error would be reviewed for a substantial risk of a miscarriage of justice.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Angel Aviles v. Commonwealth

TOPICS

- evidence
- hearsay
- appellate procedure
- standard of review
- preservation of error

PRACTICE AREAS

criminal law

evidence

appellate practice

QUESTIONS PRESENTED

1. Whether testimony concerning Marie's later disclosure to her grandmother and her mother's receipt of additional information was admissible under the first complaint doctrine or on an independent evidentiary basis.
2. What standard of appellate review applies to a trial judge's decision concerning the admissibility of first complaint evidence.
3. Whether the defendant adequately preserved his challenge to the disclosure testimony through objections made during the motion in limine colloquies.
4. Whether the trial judge properly admitted additional grand jury testimony under the doctrine of verbal completeness after the defense introduced a portion of Marie's grand jury testimony.

HOLDINGS

1. The defendant adequately preserved his objection to testimony concerning Marie's disclosure to her grandmother because the judge expressly stated that the objection was noted and the defendant's rights were preserved in the context of the broader challenge.
2. The fact that Marie disclosed the alleged rape to her grandmother was not admissible as first complaint evidence because the doctrine generally limits complaint testimony to one first complaint witness and does not permit testimony that the complainant told additional persons.
3. Evidence barred by the first complaint doctrine may nevertheless be admitted when it is independently relevant to a contested issue and its probative value outweighs its prejudicial effect.
4. A trial judge's determination that proposed first complaint evidence is admissible is reviewed for abuse of discretion.
5. The trial judge properly admitted the additional portion of Marie's grand jury testimony because it concerned the same subject, arose during the same line of questioning, and was necessary to prevent the defense-introduced excerpt from creating a misleading impression.

KEY QUOTATIONS

"Once a judge has carefully and thoroughly analyzed these considerations, and has decided that proposed first complaint evidence is admissible, an appellate court shall review that determination under an abuse of discretion standard." (73)

"To be admitted, 'the additional portions of the statement must be (1) on the same subject as the admitted statement; (2) part of the same conversation as the admitted statement; and (3) necessary to the understanding of the admitted statement.'" (75)

FACTUAL BACKGROUND

Aviles shared an apartment with eight-year-old Marie and her family. Over several months, he touched Marie over her clothing and later sexually assaulted her in a bathroom, warning her not to tell her mother. Marie first disclosed that Aviles had touched her to her mother in 2002, but in 2005 disclosed the alleged rape to her grandmother after seeing Aviles's photograph on television; the family then contacted police.

PROCEDURAL HISTORY

A Superior Court jury found Aviles guilty of rape of a child and indecent assault and battery on a child under fourteen. The Appeals Court affirmed the convictions in a divided decision. The Supreme Judicial Court granted further appellate review and affirmed.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Aviles, 77 Mass. App. Ct. 389 (2010)
- Commonwealth v. King, 445 Mass. 217 (2005), cert. denied, 546 U.S. 1216 (2006)
- Commonwealth v. Whelton, 428 Mass. 24, 25-26 (1998)
- Commonwealth v. Gabbidon, 398 Mass. 1, 7 (1986)
- Commonwealth v. Galicia, 447 Mass. 737, 746-747 (2006)
- Commonwealth v. Kee, 449 Mass. 550, 553 n.5 (2007)
- Commonwealth v. Dunton, 397 Mass. 101, 102 n.2 (1986)
- Commonwealth v. LaSota, 29 Mass. App. Ct. 15, 24 n.12 (1990)
- Rotkiewicz v. Sadowsky, 431 Mass. 748, 751-752 (2000)
- Commonwealth v. Flebotte, 417 Mass. 348, 353 (1994)
- Commonwealth v. Arana, 453 Mass. 214 (2009)
- Commonwealth v. Dargon, 457 Mass. 387, 399-400 (2010)
- Commonwealth v. McCoy, 456 Mass. 838, 845, 850-852 (2010)
- Commonwealth v. Monteiro, 75 Mass. App. Ct. 489, 493, 495 (2009)
- Commonwealth v. Kebreau, 454 Mass. 287 (2009)
- Commonwealth v. Murungu, 450 Mass. 441 (2008)
- Commonwealth v. Tennison, 440 Mass. 553, 563-564 (2003)
- Commonwealth v. Carmona, 428 Mass. 268, 272 (1998)
- Commonwealth v. Robles, 423 Mass. 62, 69 (1996)
- McAllister v. Boston Hous. Auth., 429 Mass. 300, 303 (1999)
- Kobayashi v. Orion Ventures, Inc., 42 Mass. App. Ct. 492, 498 (1997)
- Commonwealth v. Clark, 432 Mass. 1, 14-15 & n.8 (2000)
- Commonwealth v. Leftwich, 430 Mass. 865, 871-872 (2000)

- Commonwealth v. Watson, 377 Mass. 814, 825-831 (1979)

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