

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. Greineder

458 Mass. 207 (2010) · No. SJC-08866 · Decided November 4, 2010

SUMMARY

The Supreme Judicial Court of Massachusetts reviewed Dirk K. Greineder's convictions for the deliberately premeditated murder of his wife and the denial of his amended motion for a new trial. The defendant raised claims involving closure of jury selection, admission of DNA and prior-bad-acts evidence, prosecutorial questioning, witness recantation, juror exposure to extraneous information, ineffective assistance of counsel, and suppression issues. The court affirmed the convictions and denial of the amended new-trial motion and declined to exercise its powers under G. L. c. 278, § 33E.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Spina, J.; Marshall, C.J.; Cowin, J.; Botsford, J.; Gants, J.
JURISDICTION	Massachusetts
DECIDED	November 4, 2010
DOCKET	SJC-08866
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed from his conviction of deliberately premeditated murder and from the denial of his amended motion for a new trial. The appeals were consolidated, and the Supreme Judicial Court retained jurisdiction after remanding for findings concerning whether the individual jury voir dire had been closed to the public or media.
STANDARD OF REVIEW	Constitutional ultimate factual and legal conclusions are reviewed independently, while subsidiary findings on a new-trial motion are reviewed for clear abuse of discretion or clear error. Evidentiary rulings are reviewed for abuse of discretion; unpreserved claims are reviewed for a substantial likelihood of a miscarriage of justice; preserved nonconstitutional errors are reviewed for prejudice. Recusal is reviewed for abuse of discretion. A new-trial ruling by the trial judge receives special deference. Counsel's tactical decisions constitute ineffective assistance only if manifestly unreasonable when made.

PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Dirk K. Greineder v. Commonwealth

TOPICS

criminal procedure evidence jury selection sixth amendment ineffective assistance

PRACTICE AREAS

criminal procedure evidence constitutional law post-conviction relief appellate procedure

QUESTIONS PRESENTED

1. Whether the defendant's constitutional right to a public trial was violated because the individual voir dire was closed to the public or media.
2. Whether the trial judge was required to recuse himself after submitting initial factual findings concerning the public-trial claim.
3. Whether admission through a testifying expert of details of DNA testing performed by a nontestifying analyst violated the defendant's confrontation rights or constituted prejudicial hearsay.
4. Whether evidence of the defendant's extramarital sexual activity was improperly admitted as prior bad acts evidence.
5. Whether the prosecutor improperly elicited or argued from the defendant's prearrest or postarrest silence and inconsistent accounts.
6. Whether newly discovered recantation evidence and a jury experiment with a banana required a new trial.
7. Whether trial counsel was ineffective for failing to challenge the reliability or admissibility of the DNA evidence.
8. Whether trial counsel was ineffective for failing to suppress a hardware-store receipt seized under a warrant.
9. Whether trial counsel was ineffective for failing to suppress evidence derived from a warrantless search of the defendant's automobile.
10. Whether cumulative error or the court's extraordinary review under G. L. c. 278, § 33E warranted relief.

HOLDINGS

1. The defendant failed to establish a constitutional closure of the individual voir dire because there was no court order or other official action excluding the public or media.
2. The trial judge did not abuse his discretion by declining to recuse himself after issuing initial findings concerning the public-trial claim.
3. The admission of the DNA analyst's testimonial test-result details through another expert was hearsay error, but the error was not prejudicial; the testifying expert's independent opinion based on admissible

material and customary expert reliance did not violate the Sixth Amendment.

4. Evidence of the defendant's extramarital sexual activity was admissible because it was relevant to motive and its probative value outweighed its prejudicial effect in the circumstances of this case.
5. The prosecutor's questioning and closing argument were not improper because they addressed prior inconsistent statements rather than an exercise of the right to remain silent, and the defendant had not received Miranda warnings when he made the statements.
6. The recantation concerning the footprint evidence did not warrant a new trial because it did not cast real doubt on the justice of the conviction or create a substantial likelihood of a different verdict.
7. The jury's use of a banana to observe whether the gloves could create dot and swipe patterns did not constitute exposure to extraneous matter requiring a new trial.
8. Counsel was not ineffective for declining to file a Lanigan motion or for selecting and presenting the DNA experts used at trial because the decisions were not manifestly unreasonable and the defendant did not show that a reliability challenge would have succeeded.
9. The court did not need to decide whether the receipt was suppressible because counsel's failure to seek suppression did not create a substantial likelihood of a miscarriage of justice.
10. Counsel was not ineffective for declining to suppress evidence from the search of the defendant's Toyota because the decision was a reasonable tactical choice and was not manifestly unreasonable.

KEY QUOTATIONS

"In these circumstances, the judge's choice of the word "non-public" may have been unfortunate, but we will not presume that he meant the voir dire proceeding itself was closed to the public." (227-228)

"This evidence, while providing basis for Dr. Cotton's opinion, was hearsay." (237)

"Our test for admissibility is more nuanced than that in the Casterline case." (241)

FACTUAL BACKGROUND

Dirk Greineder's wife was fatally stabbed while walking with him and their dog near Moses Pond in Wellesley. Police found bloodstained gloves, a hammer, a knife, and related physical and DNA evidence linking Greineder to the crime scene and weapons. Greineder gave police and others differing accounts of the events, and the Commonwealth presented evidence of extramarital sexual activity as motive. The defense disputed the DNA testing, advanced a third-party-culprit and DNA-transfer theory, and challenged the investigation and forensic evidence.

PROCEDURAL HISTORY

After the defendant was convicted of murdering his wife, he moved for a new trial. Following an evidentiary hearing, the motion and an amended motion were denied. The Supreme Judicial Court remanded for factual findings on the public-trial claim, an evidentiary hearing was held, and the trial judge submitted supplemental findings. The Supreme Judicial Court affirmed both the conviction and the order denying the amended motion for a new trial, and declined to grant relief under G. L. c. 278, § 33E.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Cohen (No. 1), 456 Mass. 94 (2010)
- Commonwealth v. Grace, 397 Mass. 303, 307 (1986)
- Commonwealth v. Torres, 437 Mass. 460, 469 (2002)
- Commonwealth v. Amirault, 399 Mass. 617, 626 (1987)
- Commonwealth v. Tucceri, 412 Mass. 401, 409 (1992)
- Commonwealth v. Novo, 442 Mass. 262, 266 (2004)
- Lena v. Commonwealth, 369 Mass. 571, 575 (1976)
- Commonwealth v. Coyne, 372 Mass. 599, 602 (1977)
- Commonwealth v. Adkinson, 442 Mass. 410, 415 (2004)
- Liteky v. United States, 510 U.S. 540, 551 (1994)
- Commonwealth v. Wright, 411 Mass. 678, 681-682 (1992)
- Commonwealth v. Banville, 457 Mass. 530, 541 (2010)
- Department of Youth Servs. v. A Juvenile, 398 Mass. 516, 531-532 (1986)
- Commonwealth v. Barbosa, 457 Mass. 773, 791 (2010)
- Commonwealth v. Avila, 454 Mass. 744, 762 (2009)
- Commonwealth v. Nardi, 452 Mass. 379, 387-396 (2008)
- Commonwealth v. McNickles, 434 Mass. 839, 857 (2001)
- Crawford v. Washington, 541 U.S. 36 (2004)
- Griffith v. Kentucky, 479 U.S. 314, 320-328 (1987)
- Commonwealth v. Gonsalves, 445 Mass. 1, 3 (2005)
- Commonwealth v. Koney, 421 Mass. 295, 299 (1995)
- Commonwealth v. Galicia, 447 Mass. 737, 746 (2006)
- Commonwealth v. Barrett, 418 Mass. 788, 793-794 (1994)
- Commonwealth v. Helfant, 398 Mass. 214, 225 (1986)
- Commonwealth v. Butler, 445 Mass. 568, 574-575 (2005)
- Casterline v. State, 736 S.W.2d 207, 211-212 (Tex. Ct. App. 1987)
- Commonwealth v. Angelo Todesca Corp., 446 Mass. 128, 132-133 (2006)
- Commonwealth v. Raposa, 440 Mass. 684, 691 (2004)
- Commonwealth v. Mendes, 441 Mass. 459, 464 (2004)
- Commonwealth v. Bradshaw, 385 Mass. 244, 269 (1982)
- Commonwealth v. Bonomi, 335 Mass. 327, 355 (1957)
- Anderson v. Charles, 447 U.S. 404, 405-409 (1980)

- Fletcher v. Weir, 455 U.S. 603 (1982)
- Commonwealth v. Sherick, 401 Mass. 302 (1987)
- Commonwealth v. Donovan, 58 Mass. App. Ct. 631, 636-637 (2003)
- Commonwealth v. Beauchamp, 424 Mass. 682, 690 (1997)
- Commonwealth v. Person, 400 Mass. 136, 142 (1987)
- Commonwealth v. Ewing, 67 Mass. App. Ct. 531, 542 (2006)
- Commonwealth v. Moore, 408 Mass. 117, 125, 129-132 (1990)
- Commonwealth v. Weichell, 446 Mass. 785, 798 (2006)
- Commonwealth v. Cuffie, 414 Mass. 632, 638 (1993)
- Commonwealth v. Fidler, 377 Mass. 192, 200-201 (1979)
- Banghart v. Origoverken, A.B., 49 F.3d 1302, 1306-1307 (8th Cir. 1995)
- Commonwealth v. Lanigan, 419 Mass. 15, 25-26 (1994)
- Commonwealth v. Beliard, 443 Mass. 79, 90-91 (2004)
- Commonwealth v. Coonan, 428 Mass. 823, 827 (1999)
- Commonwealth v. Baker, 440 Mass. 519, 529 (2003)
- Commonwealth v. Bol Choeurn, 446 Mass. 510, 520-521 (2006)
- Commonwealth v. Gaynor, 443 Mass. 245, 263-267 (2005)
- Canavan's Case, 432 Mass. 304, 313 (2000)
- Commonwealth v. Vao Sok, 425 Mass. 787, 806 n.27 (1997)
- Commonwealth v. Rutkowski, 406 Mass. 673 (1990)
- Commonwealth v. Comita, 441 Mass. 86, 91 (2004)
- Commonwealth v. McCarthy, 428 Mass. 871, 873 (1999)
- Commonwealth v. Simmons, 392 Mass. 45, 48-49 (1984)
- Commonwealth v. Cutts, 444 Mass. 821, 831 (2005)