

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Hart

455 Mass. 230 (2009) · Decided October 20, 2009

SUMMARY

The Massachusetts Supreme Judicial Court affirmed the defendant’s convictions for first-degree murder, assault and battery by means of a dangerous weapon, and armed assault with intent to murder. The court held that the prosecutor properly impeached the defendant’s alibi witnesses with their prior silence after establishing three foundational requirements, and abolished the fourth requirement concerning whether the defense had asked the witnesses not to speak with police. The court also rejected challenges to the admission of recorded jailhouse telephone calls and found no basis for relief under G. L. c. 278, § 33E.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Gants, J.; Gants; Marshall
JURISDICTION	Massachusetts
DECIDED	October 20, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed convictions entered in the Superior Court for murder in the first degree, assault and battery by means of a dangerous weapon, and armed assault with intent to murder. He challenged impeachment of his alibi witnesses with their pretrial silence and admission of recorded jail telephone calls, and sought relief under G. L. c. 278, § 33E.
STANDARD OF REVIEW	Because the defendant failed to object to the challenged impeachment and recorded-call evidence on the grounds raised on appeal, the court reviewed the impeachment issue for a substantial likelihood of a miscarriage of justice. It likewise considered the ineffective-assistance claim and constitutional claims, including harmlessness beyond a reasonable doubt where applicable.
PRECEDENTIAL VALUE	binding
PARTIES	Hart v. Commonwealth

TOPICS

criminal procedure impeachment evidence appellate procedure ineffective assistance

PRACTICE AREAS

criminal law criminal procedure evidence appellate procedure constitutional law

QUESTIONS PRESENTED

1. Whether the prosecutor improperly impeached the defendant's alibi witnesses with their failure to disclose exculpatory information to police because the fourth foundational requirement recognized in *Commonwealth v. Brown* had not been established.
2. Whether recorded jailhouse telephone conversations between the defendant and his sister were improperly obtained and admitted without prior judicial approval under Mass. R. Crim. P. 17 (a) (2), and whether their admission violated the defendant's constitutional privacy rights.
3. Whether trial counsel was constitutionally ineffective for failing to object to admission of the recorded jailhouse telephone calls.
4. Whether relief should be granted under G. L. c. 278, § 33E.

HOLDINGS

1. A prosecutor may impeach an exculpatory defense witness with the witness's failure to provide the information to law enforcement after establishing that the witness knew of the pending charges and understood that the information was exculpatory, had reason to make the information available, and was familiar with the means of reporting it. The prosecutor need not establish that the defendant or defense counsel did not ask the witness to remain silent.
2. A subpoena requiring a third party to produce records before trial is invalid under Mass. R. Crim. P. 17 (a) (2) when it directs that the records be sent directly to the requesting party rather than delivered to the court, but suppression is not warranted absent prejudice.
3. An adult pretrial detainee's constitutional rights are not violated when jail officials provide recorded telephone calls in response to a subpoena if the detainee had notice that the calls were subject to monitoring and recording and the monitoring was justified by legitimate penological interests.
4. Counsel is not ineffective for failing to raise claims that the court has rejected, and any error in admitting the recorded calls was harmless in light of the totality and strength of the evidence.

KEY QUOTATIONS

"We now abolish the fourth element: the prosecutor need not elicit from the witness that she was not asked by the defendant or the defense attorney to refrain from disclosing her exculpatory information to law enforcement authorities." (455 Mass. at 240)

"We also held in Commonwealth v. Odgren, supra at 188, that suppression of improperly subpoenaed records is not warranted in the absence of prejudice." (455 Mass. at 243)

FACTUAL BACKGROUND

On April 30, 2005, after ending her relationship with Hart, Tangela Gibson encountered Hart outside Beother Billingslea's apartment. Hart slashed Gibson's throat and stabbed her repeatedly, and stabbed Billingslea multiple times, causing his death. Gibson identified Hart as her assailant, physical evidence linked Gibson's blood to Hart's clothing and shoe, and Hart presented two alibi witnesses who claimed he was at home around the time of the attacks.

PROCEDURAL HISTORY

A Superior Court jury convicted Hart of murder in the first degree of Beother Billingslea, assault and battery of Tangela Gibson by means of a dangerous weapon, and armed assault with intent to murder Gibson. On appeal, Hart argued that the prosecutor improperly impeached his alibi witnesses with their failure to come forward and that recorded jailhouse telephone calls were unlawfully obtained and admitted. The Supreme Judicial Court affirmed the convictions and declined to grant extraordinary relief under G. L. c. 278, § 33E.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Brown, 11 Mass. App. Ct. 288, 295-297 (1981)
- Commonwealth v. Roberts, 433 Mass. 45, 50-51 (2000)
- United States v. New York Tel. Co., 434 U.S. 159, 175-176 n.24 (1977)
- Commonwealth v. Nickerson, 386 Mass. 54, 57-58, 61-62 (1982)
- Commonwealth v. Cefalo, 381 Mass. 319, 338 (1980)
- Commonwealth v. Cintron, 435 Mass. 509, 522-525 (2001)
- Commonwealth v. Gregory, 401 Mass. 437, 444-445 (1988)
- Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 123 (2000)
- Commonwealth v. White, 367 Mass. 280, 284 (1975)
- Commonwealth v. Odgren, 455 Mass. 171, 184 n.24, 187-188 (2009)
- Commonwealth v. Lampron, 441 Mass. 265, 270 (2004)
- Matter of a Grand Jury Subpoena, 454 Mass. 685, 686-688, 692-693 (2009)
- People v. Dawson, 50 N.Y.2d 311, 322-323 (1980)
- Jenkins v. Anderson, 447 U.S. 231, 246 (1980) (Marshall, J., dissenting)