

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Gomes, 483 Mass. 123

130 N.E.3d 1234 (2019) · Decided September 13, 2019

SUMMARY

The Massachusetts Supreme Judicial Court held that conviction under G. L. c. 265, § 13B 1/2(b), requires proof that the defendant was acting in a professional capacity as a mandated reporter when the offense occurred. Because the evidence showed that the defendant, a police officer, was not acting professionally at the time of the conduct, the enhanced conviction was vacated. The court remanded for entry of judgment on the lesser included offense of indecent assault and battery on a child under fourteen and for resentencing.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Gaziano, J.; Budd; Cypher; Gants; Gaziano; Kafker; Lenk; Lowy
JURISDICTION	Massachusetts
DECIDED	September 13, 2019
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The defendant appealed from a conviction in the Massachusetts Superior Court for indecent assault and battery on a child under fourteen by a mandated reporter under G. L. c. 265, § 13B 1/2 (b). The Supreme Judicial Court transferred the appeal from the Appeals Court on its own motion.
STANDARD OF REVIEW	Under the Latimore standard, the court considers whether, viewing the evidence in the light most favorable to the Commonwealth, any rational jury could have found each element of the offense beyond a reasonable doubt. A motion for a required finding of not guilty must be allowed when the evidence is insufficient as a matter of law.
PRECEDENTIAL VALUE	Published opinion of the Massachusetts Supreme Judicial Court; precedential.
PARTIES	Gomes v. Commonwealth

TOPICS

- statutory interpretation
- plain meaning rule
- criminal procedure
- sentencing

PRACTICE AREAS

criminal law

criminal procedure

statutory interpretation

sex offenses

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to prove that the defendant's touching of the child was indecent for purposes of G. L. c. 265, § 13B.
2. Whether conviction under G. L. c. 265, § 13B 1/2 (b), requires proof beyond a reasonable doubt that the defendant was acting in a professional capacity as a mandated reporter at the time of the offense.
3. Whether the defendant was entitled to a required finding of not guilty on the mandated-reporter enhancement when the Commonwealth presented no evidence that he acted in his professional capacity.
4. Whether trial counsel was ineffective for failing to request a lesser-included-offense instruction.

HOLDINGS

1. The evidence was sufficient for a rational jury to find beyond a reasonable doubt that the defendant intentionally touched the child indecently.
2. To convict a defendant under G. L. c. 265, § 13B 1/2 (b), the Commonwealth must prove beyond a reasonable doubt that, at the time of the offense, the defendant was a mandated reporter acting in a professional capacity.
3. The trial judge should have allowed the defendant's motion for a required finding of not guilty because the Commonwealth presented no evidence that he was acting in his professional capacity when the offense occurred.
4. The ineffective-assistance argument was unavailing because the trial judge's erroneous ruling that a police officer was necessarily a mandated reporter foreclosed the lesser-included-offense instruction.

KEY QUOTATIONS

“Because there was no evidence that the defendant was acting in his professional capacity when he committed the offense, we must conclude that the judge erred in denying the defendant's motion for a required finding of not guilty as to G. L. c. 265, § 13B 1/2 (b).” (483 Mass. at 123)

“Reading the statutory provisions together, as we must, we conclude that to convict a defendant under G. L. c. 265, § 13B 1/2 (b), the Commonwealth must prove beyond a reasonable doubt that, at the time of the commission of the offense, the defendant was a mandated reporter who was acting in his or her professional capacity.” (483 Mass. at 129-130)

FACTUAL BACKGROUND

The defendant, a police officer trained as a mandated reporter, had dated the victim's mother for approximately ten years and frequently visited the family home. When the victim was approximately eight years old, the defendant, dressed in plain clothes, accompanied her and her mother to a cousin's apartment and sexually touched the victim while sitting on a couch. The Commonwealth presented no evidence that the defendant was acting in his professional capacity as a police officer at the time of the offense.

PROCEDURAL HISTORY

The defendant was indicted on three counts of indecent assault and battery on a child under fourteen by a mandated reporter. The trial judge ruled that a police officer was a mandated reporter as a matter of law, denied the defendant's motions for a required finding of not guilty, and instructed the jury accordingly. The jury convicted the defendant on one count and acquitted him on two others. The Supreme Judicial Court held that the evidence did not establish that the defendant acted in his professional capacity, vacated the enhanced conviction, and ordered entry of judgment on the lesser included offense with resentencing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The conviction under G. L. c. 265, § 13B 1/2 (b), is vacated and set aside. The Superior Court must enter a judgment of guilty of the lesser included offense of indecent assault and battery on a child under fourteen under G. L. c. 265, § 13B, and resentence the defendant.

CASES CITED

- Commonwealth v. Latimore, 378 Mass. 671, 676-677, 393 N.E.2d 370 (1979)
- Commonwealth v. Sanchez, 476 Mass. 725, 730, 73 N.E.3d 246 (2017)
- Doe, Sex Offender Registry Bd. No. 151564 v. Sex Offender Registry Bd., 456 Mass. 612, 616, 925 N.E.2d 533 (2010)
- Commonwealth v. Colon, 93 Mass. App. Ct. 560, 562, 106 N.E.3d 1125 (2018)
- Commonwealth v. Cruz, 93 Mass. App. Ct. 136, 138, 99 N.E.3d 827 (2018)
- Commonwealth v. Castillo, 55 Mass. App. Ct. 563, 566-567, 772 N.E.2d 1093 (2002)
- Commonwealth v. Mosby, 30 Mass. App. Ct. 181, 184, 567 N.E.2d 939 (1991)
- Commonwealth v. Trowbridge, 419 Mass. 750, 757, 647 N.E.2d 413 (1995)
- Commonwealth v. Brown, 479 Mass. 600, 606, 97 N.E.3d 349 (2018)
- Sheehan v. Weaver, 467 Mass. 734, 737, 7 N.E.3d 459 (2014)
- City Elec. Supply Co. v. Arch Ins. Co., 481 Mass. 784, 788, 790, 119 N.E.3d 735 (2019)
- Simon v. State Examiners of Electricians, 395 Mass. 238, 242, 479 N.E.2d 649 (1985)
- Thurdin v. SEI Boston, LLC, 452 Mass. 436, 444, 895 N.E.2d 446 (2008)
- Commonwealth v. Cassidy, 479 Mass. 527, 534, 96 N.E.3d 691 (2018), cert. denied, 139 S. Ct. 276, 202 L. Ed. 2d 136 (2018)
- Commonwealth v. Pon, 469 Mass. 296, 302, 14 N.E.3d 182 (2014)
- Volin v. Board of Pub. Accountancy, 422 Mass. 175, 179, 661 N.E.2d 639 (1996)
- LeClair v. Norwell, 430 Mass. 328, 333, 719 N.E.2d 464 (1999)
- Garney v. Massachusetts Teachers' Retirement Sys., 469 Mass. 384, 396, 14 N.E.3d 922 (2014)
- Commonwealth v. Gilman, 89 Mass. App. Ct. 752, 753-756, 54 N.E.3d 1120 (2016)

- Matter of a Grand Jury Investigation, 437 Mass. 340, 353, 772 N.E.2d 9 (2002)

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