

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. David M. Cohen (No. 1)

456 Mass. 94 (2010) · No. SJC-10486 · Decided February 17, 2010

SUMMARY

The Supreme Judicial Court of Massachusetts held that the defendant's Sixth Amendment right to a public trial was violated when members of the public and press were excluded from jury empanelment pursuant to a courthouse policy. The court treated the exclusion as a partial courtroom closure requiring analysis under the Waller factors and ordered a new trial. It also held that the evidence supported the witness-intimidation and false-police-report convictions and found no error in the attempted-extortion jury instruction, permitting retrial on all charges.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Botsford, J.; Marshall, C.J.; Ireland, J.; Spina, J.; Cordy, J.; Gants, J.
JURISDICTION	Massachusetts
DECIDED	February 17, 2010
DOCKET	SJC-10486
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The defendant appealed from convictions for attempted extortion, filing a false police report, and two counts of witness intimidation, and from the denial of his motion for a new trial.
STANDARD OF REVIEW	For the constitutionally based new-trial claim, the court exercised its own judgment on ultimate factual and legal conclusions. The court reviewed the structural-error claim for violation of the Sixth Amendment public-trial right. Sufficiency was reviewed under whether, viewing the evidence in the light most favorable to the Commonwealth, any rational trier of fact could have found the essential elements beyond a reasonable doubt. The preserved jury-instruction claim was reviewed for prejudicial error; the unpreserved false-police-report sufficiency claim was reviewed for a substantial risk of a miscarriage of justice.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	David M. Cohen v. Commonwealth

TOPICS

criminal procedure

sixth amendment

jury selection

appellate procedure

standard of review

PRACTICE AREAS

criminal law

criminal procedure

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the exclusion of members of the public during jury empanelment violated Cohen's Sixth Amendment right to a public trial.
2. Whether Cohen waived his public-trial right by accepting closed individual sidebar voir dire or by waiting until the fourth day of empanelment to object.
3. Whether the evidence was sufficient to support the convictions for witness intimidation.
4. Whether the evidence was sufficient to support the conviction for filing a false police report.
5. Whether the jury instruction defining malicious and unlawful conduct for attempted extortion adequately stated the law.
6. Whether the asserted prosecutorial misconduct warranted appellate relief.

HOLDINGS

1. The jury empanelment effected a partial closure of the courtroom that violated the defendant's Sixth Amendment right to a public trial because it was broader than necessary, was not preceded by adequate consideration of reasonable alternatives, and lacked sufficient case-specific support.
2. Cohen did not waive his public-trial right by declining to attend individual sidebar voir dire examinations or by objecting on the fourth day of empanelment.
3. The evidence was sufficient for a rational jury to find that Cohen wilfully sought to influence Kelly and Sexton through misrepresentation and intimidation.
4. The evidence was sufficient to support a finding that Cohen knowingly filed a materially false police report.
5. The attempted-extortion instruction adequately conveyed the distinction between permissible police discretion and wrongful conduct within the statute, and no error occurred.

KEY QUOTATIONS

"The 'sure knowledge that anyone is free to attend gives assurance that established procedures are being followed and that deviations will become known'" (at 107)

"Because the sign continued to keep the court room closed even when circumstances changed, this partial closure was too broad." (at 115)

"The defendant has thus established that the jury selection procedures used in this case violated his Sixth Amendment right to a public trial; he has also shown that he did not waive this right." (at 119)

FACTUAL BACKGROUND

Cohen, an attorney and Stoughton police sergeant, became involved in a dispute over money allegedly owed by Timothy Hills to Peter Marinilli. Cohen used his police authority to threaten Hills, handcuff him, impound his truck, and later file a police report and criminal-complaint applications concerning the encounter. Before Cohen's grand-jury investigation, he contacted witnesses Jamie Kelly and Brian Sexton and sought statements that would support or alter the account of the events. During jury empanelment in Cohen's criminal trial, a "Jury Selection in Progress. Do Not Enter" sign and court-officer policy excluded members of the public and some reporters even when seating became available.

PROCEDURAL HISTORY

A Superior Court jury convicted Cohen of four offenses and acquitted him of several others. The trial judge denied his motion for a new trial based on the exclusion of members of the public during jury empanelment. The Supreme Judicial Court reviewed the constitutional public-trial claim, the sufficiency of the evidence on three charges, and a challenged attempted-extortion instruction.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The order denying the motion for a new trial is vacated, the judgments of conviction are reversed, and the verdicts are set aside. The case is remanded to the Superior Court for further proceedings consistent with the opinion, including a new trial.

CASES CITED

- Commonwealth v. Tucceri, 412 Mass. 401, 409 (1992)
- Waller v. Georgia, 467 U.S. 39, 46-50 (1984)
- Presley v. Georgia, No. 09-5270, slip op. at 5-7 (U.S. Jan. 19, 2010)
- Commonwealth v. Martin, 417 Mass. 187, 192-194 (1994)
- Commonwealth v. Horton, 434 Mass. 823, 831-832 (2001)
- Commonwealth v. Latimore, 378 Mass. 671, 677 (1979)
- Commonwealth v. Gordon, 44 Mass. App. Ct. 233, 235-236 (1998)
- Commonwealth v. D'Amour, 428 Mass. 725, 744 (1999)
- Commonwealth v. Coolidge, 128 Mass. 55, 59-60 (1880)
- Commonwealth v. Simpson, 434 Mass. 570, 577 n.3 (2001)