

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Hardin

SJC-12067 · No. SJC-12067 · Decided December 6, 2016

SUMMARY

The Massachusetts Supreme Judicial Court held that the Boston Municipal Court had jurisdiction over complaint counts charging breaking and entering a motor vehicle and larceny, despite the complaint's use of the phrase "Known to Commonwealth" to identify the property owner. The court concluded that the counts provided sufficient notice of the alleged offenses and that any lack of specificity could be addressed through a bill of particulars. The court reversed the dismissal of the counts and remanded for further proceedings.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
JURISDICTION	Massachusetts
DECIDED	December 6, 2016
DOCKET	SJC-12067
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Commonwealth sought further appellate review of an Appeals Court decision reversing the Boston Municipal Court's dismissal of two criminal complaint counts for lack of probable cause.
STANDARD OF REVIEW	The court independently reviewed the sufficiency of the criminal complaint and the existence of subject matter jurisdiction; a jurisdictional challenge may be raised at any time and may be considered sua sponte.
PRECEDENTIAL VALUE	published opinion
PARTIES	Commonwealth v. James C. Hardin

TOPICS

- criminal procedure
- appellate procedure
- appellate jurisdiction
- probable cause

PRACTICE AREAS

- criminal procedure
- appellate procedure
- criminal charging instruments
- subject matter jurisdiction

QUESTIONS PRESENTED

1. Whether the breaking and entering and larceny counts adequately alleged criminal offenses and therefore established subject matter jurisdiction in the Boston Municipal Court.
2. Whether the complaint's use of the phrase "Known to Commonwealth" adequately alleged that the property belonged to another person.
3. Whether the dismissed counts should be reinstated despite the complaint's lack of specificity concerning the property and its owner.

HOLDINGS

1. The complaint adequately charged breaking and entering a motor vehicle with intent to commit a felony and larceny, and therefore established subject matter jurisdiction in the Boston Municipal Court.
2. Any lack of specificity concerning the property or its owner did not warrant dismissal because the deficiency could be cured through a bill of particulars.
3. Hardin's guilty plea did not waive a genuine jurisdictional defect, although the complaint in this case was not jurisdictionally defective.

KEY QUOTATIONS

"It is the court's duty to consider a challenge to its jurisdiction whenever it is raised, and even to consider such an issue on its own motion." (at 2)

"A complaint or indictment will not be dismissed . . . 'if the offense is charged with sufficient clarity to show a violation of law and to permit the defendant to know the nature of the accusation against him.'" (at 3)

"Each count of the complaint, while awkward, is adequate to allege that the victim of each offense was a property owner whose identity is known to the Commonwealth." (at 4)

FACTUAL BACKGROUND

Hardin was charged in a four-count complaint with malicious destruction of property, breaking and entering a motor vehicle with intent to commit a felony, larceny, and possession of a class B controlled substance. The complaint alleged that he broke and entered a motor vehicle and stole property that was the property of "Known to Commonwealth," without identifying the owner by name. Hardin pleaded guilty to counts one and four, while counts two and three were dismissed for lack of probable cause.

PROCEDURAL HISTORY

A Boston Municipal Court judge accepted Hardin's guilty pleas to malicious destruction of property and possession of a class B controlled substance, while dismissing the breaking and entering and larceny counts for lack of probable cause. The Appeals Court reversed the dismissal. The Supreme Judicial Court allowed Hardin's application for further appellate review, agreed that the dismissed counts should be reinstated, but affirmed the result on grounds different from those relied on by the Appeals Court.

DISPOSITION

REMAND INSTRUCTIONS

The order dismissing counts two and three is reversed, and the matter is remanded to the Boston Municipal Court for further proceedings consistent with the opinion.

CASES CITED

- Commonwealth v. Va Meng Joe, 425 Mass. 99, 102 (1997)
- Commonwealth v. Cantres, 405 Mass. 238, 239-240 (1989)
- Commonwealth v. Canty, 466 Mass. 535, 546-548 (2013)
- Commonwealth v. Palladino, 358 Mass. 28, 30-31 (1970)
- Commonwealth v. Andler, 247 Mass. 580, 582 (1924)
- Commonwealth v. Dixon, 458 Mass. 446, 456 (2010)
- Commonwealth v. Fernandes, 430 Mass. 517, 519-520 (1999), cert. denied sub nom. Martinez v. Massachusetts, 530 U.S. 1281 (2000)
- Commonwealth v. Hardin, 88 Mass. App. Ct. 681, 684 (2015)
- Commonwealth v. Wilson, 72 Mass. App. Ct. 416, 416-418 (2008)

OPINION

Commonwealth v. Hardin

PER CURIAM.

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SJC-12067

COMMONWEALTH vs. JAMES C. HARDIN. December 6, 2016. Breaking and Entering. Larceny. Practice, Criminal, Complaint, Dismissal, Appeal by Commonwealth. Jurisdiction, Felony. In a four-count complaint, James C. Hardin was charged with

(1) malicious destruction of property having a value over \$250,

(2) breaking and entering a motor vehicle in the daytime with

intent to commit a felony, (3) larceny of property having a value of \$250 or less, and (4) possession of a class B controlled substance. A judge in the Boston Municipal Court accepted Hardin's guilty plea as to counts 1 and 4, charging malicious destruction and drug possession, and dismissed counts 2 and 3, charging breaking and entering and larceny, for lack of probable cause.

The Commonwealth appealed. In a divided opinion, the Appeals Court reversed the dismissal of

these counts. *Commonwealth v. Hardin*, 88 Mass. App. Ct. 681 (2015). We allowed Hardin's application for further appellate review. We agree that these counts of the complaint should be reinstated, but on grounds different from those relied on by the Appeals Court. As he did before the Appeals Court, Hardin concedes that probable cause existed to support the two counts at issue. He argues, however, that the dismissal should be affirmed on alternative grounds. See, e.g., *Commonwealth v. Va Meng Joe*, 425 Mass. 99, 102 (1997) ("[a]n appellate court is free to affirm a ruling on grounds different from those relied on by the [plea] judge if the correct or preferred basis for affirmance is supported by the record"). Specifically, Hardin argues that the challenged counts of the complaint failed to allege a cognizable criminal act and that the breaking and entering count failed to allege an essential element of the offense, namely, that Hardin broke and entered into the motor vehicle of another person. Instead, the complaint alleges that he "did . . . break and enter a . . . motor vehicle . . . , the property of Known to Commonwealth."¹ Hardin's argument that the complaint fails to state a crime raises an issue of subject matter jurisdiction, which may be raised at any time, *Commonwealth v. Cantres*, 405 Mass. 238, 239-240 (1989), and which cannot be waived. *Commonwealth v. Canty*, 466 Mass. 535, 547 (2013), citing *Commonwealth v. Palladino*, 358 Mass. 28, 31 (1970). It is the court's duty to consider a challenge to its jurisdiction whenever it is raised, and even to consider such an issue on its own motion.² See *Commonwealth v. Andler*, 247 Mass. 580, 582 (1924), and cases cited (dismissing complaint sua sponte after conviction, where "the complaint set[] forth no crime known to the law No court has jurisdiction to sentence a defendant for that which is not a crime"). The complaint was adequate to charge Hardin with each offense and to establish jurisdiction in the Boston Municipal Court. "[A] complaint shall contain a caption as provided by law, together with a plain, concise description of the act which constitutes the crime or an appropriate legal term descriptive thereof." Mass. R. Crim. P. 4 (a), 378 Mass. 849 (1979). A charging instrument must "provide a defendant with fair notice of the crime with which he is charged." *Canty*, supra at 547, citing *Commonwealth v. Dixon*, 458 Mass. 446, 456 (2010). "A 1 The larceny count similarly alleges that Hardin "did steal the property of Known to Commonwealth." Hardin concedes that this is adequate to allege that the property belonged to another person, as implied by the term "steal." See *Commonwealth v. Hardin*, 88 Mass. App. Ct. 681, 684 (2015) (Rubin, J., dissenting in part and concurring in part). 2 In this regard, we observe that the malicious destruction count, to which Hardin pleaded guilty, also alleges that Hardin destroyed the property of "Known to Commonwealth." If such language rendered the breaking and entering count jurisdictionally defective, the malicious destruction count would suffer from the same defect. See G. L. c. 266, § 127 ("Whoever destroys or injures the personal property, dwelling house or building of another . . . " [emphasis added]). Hardin's guilty plea does not waive any jurisdictional defect. See, e.g., *Commonwealth v. Canty*, 466 Mass. 535, 546-547, 548

(2013); *Commonwealth v. Wilson*, 72 Mass. App. Ct. 416 (2008)

(dismissing complaint ten years after guilty plea). 3 complaint or indictment will not be dismissed . . . 'if the offense is charged with sufficient clarity to show a violation of law and to permit the defendant to know the nature of the accusation against him.'" Canty, *supra*, quoting *Commonwealth v. Fernandes*, 430 Mass. 517, 519-520 (1999), cert. denied sub nom. *Martinez v. Massachusetts*, 530 U.S. 1281 (2000). See G. L. c. 277, § 34 ("An indictment shall not be dismissed or be considered defective or insufficient if it is sufficient to enable the defendant to understand the charge and to prepare his defense; nor shall it be considered defective or insufficient for lack of any description or information that might be obtained by requiring a bill of particulars").³ Read in a reasonable, commonsense manner, counts 2 and 3 meet these standards by alleging in plain language that Hardin broke and entered a motor vehicle with intent to commit a felony and that he stole property.⁴ Each count also refers to the statute Hardin allegedly violated, providing further notice of the nature of the charges against him. Moreover, no reasonable person would understand count 2 as alleging that Hardin broke and entered his 3 Although G. L. c. 277, § 34, refers only to an "indictment," we treat it and like statutes as applying equally to a complaint. See Canty, 466 Mass. at 547, quoting *Commonwealth v. Fernandes*, 430 Mass. 517, 519-520 (1999), cert. denied sub nom. *Martinez v. Massachusetts*, 530 U.S. 1281 (2000) ("A complaint or indictment will not be dismissed . . . 'if the offense is charged with sufficient clarity to show a violation of law and to permit the defendant to know the nature of the accusation against him'" [emphasis added]). Cf. *Commonwealth v. Palladino*, 358 Mass. 28, 30 n.2 (1970) ("While [G. L. c. 277, § 17 (since repealed by St. 1979, c. 344, § 33)], speaks of an 'indictment[,] it has been treated as applying equally to a complaint"). 4 The complaint does not specify either the property that was stolen or broken into or the owner of the property. See G. L. c. 277, § 25 ("If an indictment for a crime involving the commission . . . of an injury to property describes the property with sufficient certainty in other respects to identify the act, it need not allege the name of the owner"). The Commonwealth urges that the complaint is nonetheless sufficient "to identify the act" and thus is in compliance with § 25. We need not resolve this issue. In the circumstances of this case, any lack of specificity does not warrant dismissal, as it could be cured by means of a bill of particulars. G. L. c. 277, § 34. See Canty, 466 Mass. at 548. 4 own property. There is no basis to dismiss the complaint for lack of jurisdiction. *Commonwealth v. Wilson*, 72 Mass. App. Ct. 416 (2008), is not to the contrary. In that case, the complaint charged that the defendant "did, by means of a dangerous weapon, MOTOR VEHICLE, assault and beat COMM OF MASS [sic], in violation of G. L. c. 265, § 15A." *Id.* at 416. The complaint was defective because the crime of assault and battery, as a crime against the person, requires a human victim. *Id.* at 417. The Commonwealth of Massachusetts is not capable of being the victim of an assault and battery. The complaint in *Wilson* did not state a crime, as "[t]here is no crime of assault and battery upon the Commonwealth of Massachusetts." *Id.* at 418. Here, in contrast, the offenses in question are crimes against property. G. L. c. 266, §§ 18 and 30. Any property owner, human or otherwise, is

capable of being the victim of such an offense. Each count of the complaint, while awkward, is adequate to allege that the victim of each offense was a property owner whose identity is known to the Commonwealth.⁵ The order dismissing counts 2 and 3 of the complaint is reversed, and the matter is remanded to the Boston Municipal Court for further proceedings consistent with this opinion. So ordered. Timothy St. Lawrence for the defendant. Zachary Hillman, Assistant District Attorney, for the Commonwealth. ⁵ Although we conclude that the complaint was adequate in this case, the "Known to Commonwealth" language has unfortunately resulted in doubt and confusion. We trust that, going forward, the Commonwealth will use more straightforward language in its complaints, for example, by using the alleged victim's name or a phrase such as "another person."