

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Burgos

464 Mass. 23 (2012) · Decided December 21, 2012

SUMMARY

The Massachusetts Supreme Judicial Court affirmed Luis Alberto Montalvo Burgos’s conviction of murder in the first degree. The court rejected challenges to photographic identifications, testimony that witnesses feared for their lives, and testimony concerning the defendant’s drug sales. The court also found no basis for relief under G. L. c. 278, § 33E.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Ireland, C.J.
JURISDICTION	Massachusetts
DECIDED	December 21, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed his conviction of murder in the first degree, challenging the denial of his motion to suppress photographic identifications and the admission of testimony concerning witness fears and the defendant's drug sales. He also sought relief under G. L. c. 278, § 33E.
STANDARD OF REVIEW	The court accepts the motion judge's factual findings unless clearly erroneous, independently determines the correctness of the judge's application of constitutional principles to those facts, and defers to the motion judge on credibility determinations. A photographic-identification suppression motion requires the defendant to prove by a preponderance of the evidence that, under the totality of the circumstances, the procedures were unnecessarily suggestive and conducive to irreparable misidentification so as to deny due process.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court opinion; precedential.
PARTIES	Luis Alberto Montalvo Burgos v. Commonwealth

TOPICS

suppression of evidence

criminal procedure

evidence

appellate procedure

harmless error

PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate practice

QUESTIONS PRESENTED

1. Whether the photographic-identification procedures used with St. Pierre, Castle, Rosario, and Vilmarie were unnecessarily suggestive and conducive to irreparable misidentification in violation of due process.
2. Whether testimony that Rosario and Vilmarie were placed in a hotel because they feared for their lives, and the prosecutor's related closing argument, created reversible error.
3. Whether testimony that the defendant sold drugs was inadmissible because it was irrelevant or because its prejudicial effect outweighed its probative value.
4. Whether the court should grant extraordinary relief under G. L. c. 278, § 33E.

HOLDINGS

1. The photographic identifications were admissible because the defendant failed to show by a preponderance of the evidence that, under the totality of the circumstances, the procedures were unnecessarily suggestive and conducive to irreparable misidentification.
2. Admission of the testimony that Rosario and Vilmarie were placed in a hotel because they feared for their lives, and the prosecutor's related closing argument, did not constitute error.
3. The testimony that the defendant sold drugs was admissible and did not create a substantial likelihood of a miscarriage of justice.
4. The court found no basis to exercise its authority under G. L. c. 278, § 33E.

KEY QUOTATIONS

“For a motion to suppress a photographic identification to succeed, ‘the defendant must show by a preponderance of the evidence that, in light of the totality of the circumstances, the procedures employed were so unnecessarily suggestive and conducive to irreparable misidentification as to deny the defendant due process of law.’” (32)

“There was no error in denying the motion to suppress the identifications of St. Pierre, Castle, Rosario, and Vilmarie.” (35)

“Judgment affirmed.” (37)

FACTUAL BACKGROUND

The victim was shot and killed inside an apartment building in Fall River after an argument involving Valdo, a known associate of the defendant. Witnesses saw the defendant enter the victim's location with a gun, heard multiple shots, and saw the defendant leave; several witnesses later identified him in photographic arrays. The

defendant did not testify, and the defense was misidentification. There was no forensic evidence connecting the defendant to the shooting.

PROCEDURAL HISTORY

A jury convicted the defendant of murder in the first degree on a theory of deliberate premeditation on November 24, 2009. After a two-day evidentiary hearing, the motion judge denied the defendant's motion to suppress four out-of-court photographic identifications. The Supreme Judicial Court affirmed the conviction and declined to grant relief under G. L. c. 278, § 33E.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Watson, 455 Mass. 246, 248, 250 (2009)
- Commonwealth v. Melvin, 399 Mass. 201, 202, 207 n.10 (1987)
- Commonwealth v. Walker, 460 Mass. 590, 600-601, 604 (2011)
- Commonwealth v. Miles, 420 Mass. 67, 77 (1995)
- Commonwealth v. Poggi, 53 Mass. App. Ct. 685, 689-694 (2002)
- Commonwealth v. Sullivan, 436 Mass. 799, 806-807 (2002)
- Commonwealth v. Mobley, 369 Mass. 892, 896 (1976)
- Commonwealth v. Silva-Santiago, 453 Mass. 782, 795, 797-799 (2009)
- Commonwealth v. Rivera, 441 Mass. 358, 367 (2004)
- Commonwealth v. Ramos, 402 Mass. 209, 216 (1988)
- Commonwealth v. Bly, 448 Mass. 473, 495 (2007)
- Commonwealth v. Martinez, 431 Mass. 168, 174 (2000)
- Commonwealth v. Hoffer, 375 Mass. 369, 375 (1978)
- Commonwealth v. Arriaga, 438 Mass. 556, 577 (2003)
- Commonwealth v. Anderson, 411 Mass. 279, 286 (1991)
- Commonwealth v. Wright, 411 Mass. 678, 681 (1992)
- Commonwealth v. John, 442 Mass. 329, 338 (2004)