

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. Matt H. Zubiel

Commonwealth v. Zubiel, 456 Mass. 27 (2010) · No. SJC-10454 · Decided February 5, 2010

SUMMARY

The Massachusetts Supreme Judicial Court held that electronically transmitted text in online conversations is not "matter" under G. L. c. 272, § 31, for purposes of prosecuting attempted dissemination of matter harmful to a minor under § 28. Construing the statute strictly, the court concluded that instant messages were neither visual representations nor handwritten or printed material, and reversed the defendant's convictions.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Spina, J.; Marshall, C.J.; Ireland, J.; Cowin, J.; Cordy, J.; Botsford, J.; Gants, J.
JURISDICTION	Massachusetts
DECIDED	February 5, 2010
DOCKET	SJC-10454
DISPOSITION	reversed
PROCEDURAL POSTURE	After a jury-waived trial, Zubiel was convicted on four indictments charging attempted dissemination of matter harmful to a minor. The trial judge denied his motions for required findings of not guilty. Zubiel appealed, and the Supreme Judicial Court transferred the case on its own motion.
STANDARD OF REVIEW	On review of the denial of a motion for a required finding of not guilty, the court considers the evidence in the light most favorable to the Commonwealth and asks whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.
PRECEDENTIAL VALUE	published Massachusetts Supreme Judicial Court opinion; precedential
PARTIES	Commonwealth v. Matt H. Zubiel

TOPICS

statutory interpretation

ejusdem generis

criminal procedure

appellate procedure

standard of review

PRACTICE AREAS

criminal law

statutory interpretation

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QUESTIONS PRESENTED

1. Whether electronically transmitted text or online conversations constitute a visual representation under the definition of matter in G. L. c. 272, § 31.
2. Whether electronically transmitted text or online conversations constitute handwritten material or printed material under G. L. c. 272, § 31.
3. Whether the evidence was sufficient to support convictions for attempted dissemination of matter harmful to a minor under G. L. c. 272, § 28.

HOLDINGS

1. Purely textual online conversations are not visual representations within the meaning of G. L. c. 272, § 31.
2. Electronically transmitted text that is neither written with pen or pencil nor mechanically printed on paper is not handwritten or printed material under G. L. c. 272, § 31.
3. The convictions could not stand because the electronically transmitted conversations did not constitute matter covered by G. L. c. 272, § 31.

KEY QUOTATIONS

“Accordingly, we hold that the Legislature did not intend online conversation to be considered as “visual representation” under § 31.” (456 Mass. at 31)

“If the Legislature wishes to include instant messaging or other electronically transmitted text in the definition of “[m]atter” under § 31, it is for the Legislature, not the court, to do so.” (456 Mass. at 33)

FACTUAL BACKGROUND

An undercover deputy sheriff represented herself online as a thirteen-year-old girl and engaged in private instant-message conversations with Zubiel. Zubiel discussed sexual topics, requested a nude photograph, sent a photograph of himself by e-mail, discussed visiting her, and ultimately traveled to the purported residence, where police arrested him. A forensic examination of his computer revealed searches, photographs, and portions of the online conversations.

PROCEDURAL HISTORY

Zubiel was convicted following a jury-waived trial in the Superior Court. His motions for required findings of not guilty were denied at the close of the Commonwealth's case and again at the close of the evidence. The Supreme Judicial Court considered whether electronically transmitted online conversations constituted matter under G. L. c. 272, § 31, and reversed the convictions.

DISPOSITION

reversed

CASES CITED

- Commonwealth v. Latimore, 378 Mass. 671, 677-678 (1979)
- Commonwealth v. Twitchell, 416 Mass. 114, 123 (1993)
- Kolender v. Lawson, 461 U.S. 352, 357 (1983)
- Commonwealth v. Richards, 426 Mass. 689, 690 (1998)
- Santos v. Bettencourt, 40 Mass. App. Ct. 90, 92 (1996)
- Commonwealth v. O'Keefe, 48 Mass. App. Ct. 566, 567-571 (2000)
- Commonwealth v. Zone Book, Inc., 372 Mass. 366, 369 (1977)
- Commonwealth v. Hinds, 437 Mass. 54, 64 (2002), cert. denied, 537 U.S. 1205 (2003)

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