

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. Brum

438 Mass. 103 (2002) · Decided November 8, 2002

SUMMARY

The Supreme Judicial Court of Massachusetts affirmed the defendant’s convictions for murder in the first degree arising from the killing and robbery of a seventy-nine-year-old shop owner. The court rejected challenges concerning the admission of the defendant’s postarrest statement, the handling of his invocation of the right to remain silent, the admission of portions of a codefendant’s statement, the prosecutor’s closing argument, and the requested felony-murder instruction. The court also declined to exercise its authority under Massachusetts General Laws chapter 278, section 33E, to reduce the degree of guilt or order a new trial.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Sosman, J.
JURISDICTION	Massachusetts
DECIDED	November 8, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed convictions of murder in the first degree and armed robbery, challenging the admission of statements and codefendant evidence, denial of a mistrial, the prosecutor's closing argument, and the refusal to give a requested felony-murder instruction. He also requested relief under Massachusetts General Laws chapter 278, section 33E.
STANDARD OF REVIEW	The court reviewed the denial of the motion to suppress for legal error while giving substantial deference to the judge's factual findings and voluntariness determination; reviewed the prosecutor's closing argument for impropriety and, if improper, prejudicial error; reviewed unpreserved errors under the substantial-likelihood-of-a-miscarriage-of-justice standard applicable to G. L. c. 278, § 33E; and reviewed the denial of a mistrial for abuse or error in light of the admissibility and curative instruction issues.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Judicial Court of Massachusetts

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QUESTIONS PRESENTED

1. Whether the defendant's postarrest confession was obtained in violation of his right to remain silent because police failed to scrupulously honor his earlier decision to terminate questioning.
2. Whether the defendant's waiver of Miranda rights during the second interview was involuntary because police refused his request to have his brother present.
3. Whether the trial judge erred in denying a mistrial after the jury heard the defendant's spontaneous remark made after he invoked his right to remain silent.
4. Whether limited portions of the nontestifying codefendant's statement were inadmissible hearsay or violated the defendant's confrontation rights.
5. Whether the prosecutor's closing argument improperly asserted that the defendant sought money from the victim to buy drugs.
6. Whether the defendant was entitled to an instruction on second-degree felony-murder predicated on larceny from the person.
7. Whether unpreserved references to the defendant's invocation of his right to remain silent and an erroneous voluntary-manslaughter burden-of-proof instruction warranted relief under G. L. c. 278, § 33E.

HOLDINGS

1. The defendant's invocation of his right to terminate questioning during the first interview did not require suppression of his later postarrest statement because the first interview was noncustodial and the defendant was released before the second custodial interrogation.
2. The defendant knowingly, intelligently, and voluntarily waived his Miranda rights during the second interview despite the officers' refusal to permit his brother to participate.
3. The defendant's spontaneous, unprovoked remark after he invoked his right to remain silent was admissible, and the trial judge properly denied the motion for a mistrial.
4. The admitted portions of the codefendant's statement were nonhearsay because they were offered to show that the statements were made and to support the inference that the brothers had contrived identical false accounts; their admission did not violate the Confrontation Clause.
5. The prosecutor's argument that the defendant sought money from the victim to buy drugs was permissible because it was fairly inferable from the evidence, and the sarcastic phrasing did not mislead

the jury into believing it was a verbatim quotation.

6. The defendant was not entitled to an instruction on second-degree felony-murder predicated on larceny from the person because his theory that the larceny was an afterthought defeated the required causal connection between the felony and the homicide.
7. The improper references to the defendant's invocation of his right to remain silent did not create a substantial likelihood of a miscarriage of justice under G. L. c. 278, § 33E.
8. The erroneous description of the burden of proof for voluntary manslaughter did not warrant relief because there was no evidence supporting provocation or self-defense and therefore no likelihood of a miscarriage of justice.

KEY QUOTATIONS

“The crucial question is whether, considering all the circumstances, a reasonable person in the defendant’s position would have believed that he was in custody.” (111)

“Spontaneous and unprovoked statements are admissible even if made after a defendant has invoked his right to remain silent.” (115)

“A defendant may not be impeached with his silence, nor may his silence be used in any way to infer guilt.” (120-121)

“The nature of a Doyle error is so egregious that reversal is the norm, not the exception.” (122)

FACTUAL BACKGROUND

The seventy-nine-year-old victim operated a sewing-machine repair shop and was known to carry substantial cash. The defendant and his twin brother John went to the victim's shop, where the defendant choked the victim and John struck him with a hammer; the victim sustained extensive blunt-force and sharp-force injuries and died. Afterward, the brothers disposed of clothing, weapons, the victim's wallet, and credit cards, and used money taken from the wallet to obtain drugs. The defendant later gave a detailed confession, while physical evidence, including the weapons and clothing, corroborated the prosecution's account.

PROCEDURAL HISTORY

A jury convicted the defendant of first-degree murder under theories of deliberate premeditation, extreme atrocity or cruelty, and felony-murder, as well as armed robbery. The trial judge denied the defendant's motion to suppress his postarrest statement and his motion for a mistrial, excluded a signed version of part of the defendant's statement, admitted limited portions of the codefendant's statement, and refused the requested second-degree felony-murder instruction. The Supreme Judicial Court affirmed the convictions and declined to reduce the degree of guilt or order a new trial under section 33E.

DISPOSITION

affirmed

CASES CITED

- Michigan v. Mosley, 423 U.S. 96, 104-106 (1975)
- Commonwealth v. Brant, 380 Mass. 876, 882, cert. denied, 449 U.S. 1004 (1980)
- Commonwealth v. Damiano, 422 Mass. 10, 13 (1996)
- Commonwealth v. Groome, 435 Mass. 201, 211-212, 218-219 (2001)
- Robinson v. Trast, 128 F. Supp. 2d 710, 717-718 (D. Kan. 2001)
- Commonwealth v. Galford, 413 Mass. 364, 369-371 (1992)
- Commonwealth v. Day, 387 Mass. 915, 920 (1983)
- Commonwealth v. Edwards, 420 Mass. 666, 671 (1995)
- Commonwealth v. Diaz, 422 Mass. 269, 270-271 (1996)
- Miranda v. Arizona, 384 U.S. 436, 478 (1966)
- Bruton v. United States, 391 U.S. 123, 135-136 (1968)
- Anderson v. United States, 417 U.S. 211, 219-220 (1974)
- Commonwealth v. Silanskas, 433 Mass. 678, 693-694 (2001)
- Tennessee v. Street, 471 U.S. 409, 414 (1985)
- Dutton v. Evans, 400 U.S. 74, 88 (1970)
- Commonwealth v. Wilson, 427 Mass. 336, 350-351 (1998)
- Commonwealth v. Santiago, 425 Mass. 491, 500 (1997), S.C., 427 Mass. 298, and 428 Mass. 39, cert. denied, 525 U.S. 1003 (1998)
- Commonwealth v. Pope, 406 Mass. 581, 587 (1990)
- Commonwealth v. Rivera, 52 Mass. App. Ct. 321, 326 (2001)
- Commonwealth v. Sanna, 424 Mass. 92, 107 (1997)
- Commonwealth v. Christian, 430 Mass. 552, 559 (2000)
- Commonwealth v. Jackson, 428 Mass. 455, 467 (1998)
- Commonwealth v. Doucette, 430 Mass. 461, 470 (1999)
- Doyle v. Ohio, 426 U.S. 610, 618-619 (1976)
- Commonwealth v. DePace, 433 Mass. 379, 382-385 (2001)
- Commonwealth v. Waite, 422 Mass. 792, 799 n.5 (1996)
- Commonwealth v. Fowler, 431 Mass. 30, 42-43 (2000)
- Commonwealth v. Peixoto, 430 Mass. 654, 661 (2000)
- Commonwealth v. Acevedo, 427 Mass. 714, 716 (1998)
- Commonwealth v. Mahdi, 388 Mass. 679, 696-698 (1983)

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