

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Kebreau

454 Mass. 287 (2009) · Decided July 16, 2009

SUMMARY

The Massachusetts Supreme Judicial Court affirmed the defendant’s convictions for sexual offenses and related crimes against his daughters. The court held that, under the first complaint doctrine, two first complaint witnesses could testify about disclosures concerning different periods and escalating levels of abuse, and that additional challenged testimony was properly admitted in response to the defense. The court also held that the defendant’s statements at a church family meeting were not protected by the priest-penitent privilege and that the prosecutor did not improperly vouch for witnesses.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Cowin, J.
JURISDICTION	Massachusetts
DECIDED	July 16, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed convictions entered after a Superior Court jury trial. The Supreme Judicial Court transferred the appeal from the Appeals Court on its own motion.
STANDARD OF REVIEW	Unpreserved evidentiary and prosecutorial-misconduct claims were reviewed for a substantial risk of a miscarriage of justice. The existence of the claimed priest-penitent privilege was treated as a question of law, although factual findings concerning the defendant's intent were reviewed under the trial judge's factual determinations. Ineffective-assistance claims were reviewed under Commonwealth v. Saferian.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court opinion; binding precedent in Massachusetts.
PARTIES	Commonwealth v. Kebreau, Kebreau v. Commonwealth

TOPICS

evidence

privilege

preservation of error

appellate procedure

criminal procedure

PRACTICE AREAS

criminal law

evidence

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QUESTIONS PRESENTED

1. Whether the first complaint doctrine permitted two first complaint witnesses to testify concerning disclosures about different and escalating criminal acts occurring over a lengthy period.
2. Whether testimony from witnesses concerning contacts with third parties, police, counseling personnel, and the church meeting was impermissible cumulative first complaint evidence or was admissible in response to cross-examination and to provide context for the defendant's admissions.
3. Whether the defendant's inculpatory statements at the church family meeting were protected by the priest-penitent privilege under G. L. c. 233, § 20A.
4. Whether the prosecutor impermissibly vouched for the credibility of witnesses during closing argument.
5. Whether defense counsel rendered ineffective assistance by eliciting or failing to object to testimony concerning the restraining order and related matters.

HOLDINGS

1. The first complaint doctrine permits testimony from two first complaint witnesses when the disclosures concern different and escalating criminal acts committed over a lengthy period, separated by substantially different time frames, rather than multiple reports of a single assault.
2. Testimony admitted in response to the defendant's cross-examination, to rehabilitate witnesses, or to provide context for the defendant's admissions was not impermissible first complaint testimony. Some testimony concerning a call to DSS and Patricia's obtaining a restraining order was impermissible, but its admission did not create a substantial risk of a miscarriage of justice.
3. The defendant's inculpatory statements were not protected by the priest-penitent privilege because he did not make them while seeking religious or spiritual advice or comfort.
4. The prosecutor did not impermissibly vouch for the Commonwealth's witnesses because the challenged remarks argued credibility from the evidence and did not express personal belief or imply knowledge of evidence outside the record.
5. Defense counsel was not ineffective for pursuing cross-examination concerning the restraining order and related matters because the credibility-focused strategy was not manifestly unreasonable when made.

KEY QUOTATIONS

"There was no error in the judge's decision to permit both Solange and Seymour to testify." (454 Mass. at 294)

"The judge did not err in denying the defendant's motion to suppress." (454 Mass. at 303)

“The prosecutor was entitled to respond to these statements with a forceful argument, based on the evidence and the jury’s common sense understanding of the events, that the Commonwealth’s witnesses were telling the truth.” (454 Mass. at 305)

“Judgments affirmed.” (454 Mass. at 305)

FACTUAL BACKGROUND

The defendant sexually abused his two daughters over many years, with the abuse escalating from sexualized touching to digital penetration and, as to Rachel, penile penetration. The daughters disclosed the abuse at different times and to different people, including their mother, a college advisor, and a pastor. At a family meeting in a church, the defendant made inculpatory statements, apologized, and asked his daughters for forgiveness. The defense attacked the daughters' and other witnesses' credibility, and the prosecutor responded during closing argument by arguing from the evidence that the Commonwealth's witnesses were credible.

PROCEDURAL HISTORY

A Superior Court jury convicted the defendant of two counts of rape of a child, four counts of indecent assault and battery on a child under fourteen, one count of assault and battery, and one count of threatening to commit a crime; the jury acquitted him of incest. Before trial, the judge denied the defendant's motion to suppress statements made during a church family meeting, and a single justice denied relief under G. L. c. 211, § 3. The defendant appealed, challenging multiple first complaint witnesses, related testimony admitted in response to the defense, the priest-penitent privilege ruling, prosecutorial vouching, and ineffective assistance of counsel.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. King, 445 Mass. 217, 242-248 (2005), cert. denied, 546 U.S. 1216 (2006)
- Commonwealth v. Murungu, 450 Mass. 441, 446-447 (2008)
- Commonwealth v. Stuckich, 450 Mass. 449, 451, 456-457 & n.11 (2008)
- Commonwealth v. Whelton, 428 Mass. 24, 25 (1998)
- Commonwealth v. Alphas, 430 Mass. 8, 17 (1999)
- Commonwealth v. Mendes, 441 Mass. 459, 469-470 (2004)
- Commonwealth v. Hall, 66 Mass. App. Ct. 390, 394-395 (2006)
- Commonwealth v. Arana, 453 Mass. 214, 229 (2009)
- Commonwealth v. Comtois, 399 Mass. 668, 674 (1987)
- Commonwealth v. Saferian, 366 Mass. 89, 96 (1974)
- Commonwealth v. Diaz, 448 Mass. 286, 288 (2007)
- Matter of a Grand Jury Subpoena, 447 Mass. 88, 90 (2006)
- Miller v. Milton Hosp. & Med. Ctr., Inc., 54 Mass. App. Ct. 495, 498-499 (2002)

- Commonwealth v. Sanders, 451 Mass. 290, 296-297 (2008)
- Commonwealth v. Renderos, 440 Mass. 422, 425-426 & n.3 (2003)
- Commonwealth v. Dixon, 425 Mass. 223, 232-233 (1997)
- Commonwealth v. Ciampa, 406 Mass. 257, 265 (1989)

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