

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. Moscaritolo

Moscaritolo · No. SJC-13575 · Decided March 6, 2026

SUMMARY

The Massachusetts Supreme Judicial Court affirms Michael Moscaritolo’s convictions for murder in the first degree, burglary with assault on an occupant, unarmed robbery, and larceny of firearms. The court rejects his challenges to the sufficiency of the evidence, the denial of an involuntary manslaughter instruction, the admission of multilevel hearsay, and the asserted duplicative nature of the burglary conviction, and declines to grant relief under G. L. c. 278, § 33E.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Wendlandt, J.; Budd, C.J.; Gaziano, J.; Georges, J.; Wolohojian, J.
JURISDICTION	Massachusetts Supreme Judicial Court
DECIDED	March 6, 2026
DOCKET	SJC-13575
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from judgments entered after a second jury trial convicting him of murder in the first degree, burglary with assault on an occupant, unarmed robbery, and five counts of larceny of a firearm.
STANDARD OF REVIEW	Sufficiency of the evidence was considered only as necessary because the defendant did not challenge the other independently sufficient theories of first-degree murder. The denial of a requested involuntary manslaughter instruction was reviewed for prejudicial error. Evidentiary rulings were reviewed for abuse of discretion; if an abuse occurred, preserved error was reviewed for prejudice. Relief under G. L. c. 278, § 33E, was considered through independent review of the entire record.
PRECEDENTIAL VALUE	Published precedential opinion of the Massachusetts Supreme Judicial Court.
PARTIES	Michael Moscaritolo v. Commonwealth

TOPICS

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evidence

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support first-degree murder on the theory of deliberate premeditation.
2. Whether the trial judge erred by refusing to instruct the jury on involuntary manslaughter.
3. Whether testimony recounting Ferguson's statements about Moscaritolo's robbery plan constituted inadmissible multilevel hearsay.
4. Whether the conviction for burglary with assault on an occupant was duplicative of the first-degree felony-murder conviction.
5. Whether extraordinary relief under G. L. c. 278, § 33E, warranted a new trial or reduction of the murder conviction.

HOLDINGS

1. The court declined to reach the defendant's sufficiency challenge to deliberate premeditation because the jury also convicted him on the independently sufficient theories of extreme atrocity or cruelty and felony-murder, neither of which he challenged.
2. The trial judge properly refused to instruct on involuntary manslaughter because no view of the evidence supported wanton or reckless conduct causing death without malice.
3. The admission of Romani's testimony about Ferguson's statements was an abuse of discretion because Ferguson's statements to his girlfriend were not shown to have been made during the joint venture and in furtherance of it, but the error was harmless and did not warrant reversal.
4. The burglary-with-assault-on-an-occupant conviction was not duplicative of the first-degree murder conviction because the murder conviction rested on both felony-murder and other theories; the predicate felony therefore stood.
5. Independent review of the entire record disclosed no basis to order a new trial or reduce the first-degree murder conviction.

KEY QUOTATIONS

"Out-of-court statements by joint venturers are admissible against the others if the statements are made during the pendency of the criminal enterprise and in furtherance of it." (30)

"The admissibility of Romani's testimony turns on whether the record supports the trial judge's finding by a preponderance of the evidence that Ferguson made the statements in furtherance of the joint venture." (31)

"For the reasons discussed, the judgment convicting the defendant of murder in the first degree and the remaining judgments are affirmed." (37)

FACTUAL BACKGROUND

Michael Moscaritolo and coventurers James W. Ferguson and Mark O'Brien planned to rob Robert McKenna's Marshfield home of marijuana and firearms. During the robbery, McKenna sustained repeated blows to his head and body, including blows from a frying pan dented by the force of the attack, and a deep arm injury caused by broken glass; he died from exsanguination. Physical, forensic, and testimonial evidence linked Moscaritolo to the home, the attack, the stolen firearms, and the subsequent concealment and disposal of evidence.

PROCEDURAL HISTORY

The indictments were returned in the Superior Court Department on November 25, 2015. At the first trial, the jury convicted the defendant of burglary with assault on an occupant, unarmed robbery, and five counts of larceny of a firearm, but could not reach a unanimous verdict on murder, resulting in a mistrial on that charge. After a second trial, the defendant was convicted of murder in the first degree on theories of deliberate premeditation, extreme atrocity or cruelty, and felony-murder, and received a life sentence without parole, with concurrent sentences on the remaining convictions. The Supreme Judicial Court affirmed all judgments and declined to grant relief under G. L. c. 278, § 33E.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. O'Brien, 494 Mass. 288 (2024)
- Commonwealth v. Cheng Sun, 490 Mass. 196, 201 (2022)
- Commonwealth v. Barbosa, 463 Mass. 116, 135 (2012)
- Commonwealth v. Escobar, 493 Mass. 694, 708 (2024)
- Commonwealth v. Chase, 433 Mass. 293, 298 (2001)
- Commonwealth v. Tyler, 493 Mass. 752, 760 (2024)
- Commonwealth v. Jessup, 471 Mass. 121, 135 (2015)
- Commonwealth v. Simpson, 434 Mass. 570, 590 (2001)
- Commonwealth v. Pagan, 471 Mass. 537, 546-547 (2015), cert. denied, 577 U.S. 1013 (2015)
- Commonwealth v. Welansky, 316 Mass. 383, 387, 397, 399 (1944)
- Commonwealth v. Hardy, 482 Mass. 416, 424 (2019)
- Commonwealth v. Santana-Rodriguez, 496 Mass. 693, 697 & n.3 (2025)
- Commonwealth v. Castillo, 485 Mass. 852, 858 (2020)
- Commonwealth v. Szlachta, 463 Mass. 37, 45-46 (2012)
- Commonwealth v. Burnham, 451 Mass. 517, 527 (2008)
- Commonwealth v. Moseley, 483 Mass. 295, 303-304 (2019)
- Commonwealth v. Silva, 471 Mass. 610, 621-622 (2015)
- Commonwealth v. Nichypor, 419 Mass. 209, 217 (1994)

- Commonwealth v. Keown, 478 Mass. 232, 249-250 (2017), cert. denied, 583 U.S. 1139 (2018)
- Commonwealth v. Gebo, 489 Mass. 757, 773-774 (2022)
- Commonwealth v. Semedo, 422 Mass. 716, 719 (1996)
- Commonwealth v. Malone, 100 Mass. App. Ct. 399, 407 n.13 (2021)
- Commonwealth v. Egerton, 396 Mass. 499, 505 (1986)
- Commonwealth v. Lee, 383 Mass. 507, 514 (1981)
- Commonwealth v. Garcia, 482 Mass. 408, 411 (2019)
- Commonwealth v. Eagles, 491 Mass. 210, 218-219 (2023)
- Commonwealth v. Da Lin Huang, 489 Mass. 162, 172 (2022)
- L.L. v. Commonwealth, 470 Mass. 169, 185 n.27 (2014)
- Commonwealth v. Rakes, 478 Mass. 22, 37 (2017)
- Commonwealth v. Carriere, 470 Mass. 1, 7-8 (2014)
- Commonwealth v. Flebotte, 417 Mass. 348, 353 (1994)
- Commonwealth v. Hobbs, 482 Mass. 538, 558-560 (2019)
- Commonwealth v. Winquist, 474 Mass. 517, 520-521 (2016)
- Commonwealth v. White, 370 Mass. 703, 712 (1976)
- Commonwealth v. Wilkerson, 486 Mass. 159, 174-176 (2020)
- Commonwealth v. Chalue, 486 Mass. 847, 851, 873-875 (2021)
- Commonwealth v. Stewart, 454 Mass. 527, 529, 537 (2009)
- Commonwealth v. Wood, 469 Mass. 266, 271-273, 280-281 (2014)
- Commonwealth v. Steadman, 489 Mass. 372, 376, 380 (2022)
- Commonwealth v. Foster, 471 Mass. 236, 244 (2015)
- Commonwealth v. Jenner, 24 Mass. App. Ct. 763, 771-775 (1987)
- Commonwealth v. Joyce, 18 Mass. App. Ct. 417, 419-421 (1984)

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