

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Christopher J. Kennedy

478 Mass. 804 (2018) · No. SJC-12345 · Decided February 9, 2018

SUMMARY

The Massachusetts Supreme Judicial Court affirmed Christopher J. Kennedy's convictions for indecent assault and battery, assault and battery, and indecent exposure. The court held that the trial judge properly declined to instruct the jury on mistake of fact, properly admitted first complaint and investigative evidence, and did not abuse discretion in denying challenges for cause to two prospective jurors. The opinion addresses consent, mens rea, first complaint evidence, voir dire, and juror impartiality.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Gaziano, J.; Gants, C.J.; Lowy, J.; Budd, J.; Kafker, J.
JURISDICTION	Massachusetts
DECIDED	February 9, 2018
DOCKET	SJC-12345
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed his Superior Court convictions after the trial judge denied requested mistake-of-fact jury instructions, admitted challenged first complaint and investigative testimony, and denied challenges for cause to two prospective jurors. The Supreme Judicial Court granted direct appellate review.
STANDARD OF REVIEW	The court reviewed the preserved instructional claims for prejudicial error, admission of first complaint evidence for abuse of discretion, unpreserved investigative-testimony claims for a substantial risk of a miscarriage of justice, and the denial of challenges for cause for abuse of discretion.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court opinion; precedential.
PARTIES	Christopher J. Kennedy v. Commonwealth

TOPICS

criminal procedure

jury instructions

evidence

jury selection

PRACTICE AREAS

criminal law

criminal procedure

evidence

jury selection

QUESTIONS PRESENTED

1. Whether the defendant was entitled to mistake-of-fact jury instructions for indecent assault and battery on a person over fourteen and indecent exposure.
2. Whether the trial judge abused his discretion by admitting first complaint testimony from the victim's friend and investigative testimony from police officers.
3. Whether the trial judge erred by refusing to excuse two prospective jurors for cause after conducting follow-up questioning concerning potential bias.

HOLDINGS

1. A defendant charged with indecent assault and battery on a person over fourteen may, in an appropriate case, be entitled to a mistake-of-fact instruction concerning consent, but no such instruction was warranted here because the victim gave clear and unambiguous indications of nonconsent that the defendant ignored.
2. The defendant was not entitled to a mistake-of-fact instruction on indecent exposure because the offense requires intentional exposure of the genitalia, not an intent to offend, and the defendant's belief that M.M. would not be offended did not negate a required mental state.
3. The trial judge did not abuse his discretion in admitting the victim's friend's first complaint testimony, and admission of the police officers' testimony concerning how exhibits were obtained did not violate the first complaint doctrine.
4. A trial judge has considerable discretion to conduct follow-up questioning after attorney-conducted voir dire and may deny a challenge for cause when the prospective juror affirmatively demonstrates an ability to set aside personal opinions and decide the case impartially.

KEY QUOTATIONS

"A defendant who ignores a victim's clear and unambiguous pleas to stop does not raise a legitimate claim of mistake of fact as to consent." (478 Mass. at 813)

"The law of rape is not a part of the law of contracts." (478 Mass. at 813)

"The testimony may not be used to prove the truth of the allegations." (478 Mass. at 817-818)

FACTUAL BACKGROUND

The defendant, a State trooper, met M.M. through a dating Web site and exchanged flirtatious and explicit messages with her. After meeting for coffee, he followed her to her apartment, exposed himself, continued

advancing after she repeatedly said no, grabbed her wrist, and forced her to touch his penis. M.M. promptly notified a friend and later contacted police.

PROCEDURAL HISTORY

Indictments were returned in the Superior Court Department on October 15, 2014. Following a jury trial before Daniel A. Ford, J., the defendant was convicted of indecent assault and battery on a person over fourteen, assault and battery, and indecent exposure. The Supreme Judicial Court granted direct appellate review and affirmed the convictions.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Kelly, 470 Mass. 682, 687 (2015)
- Commonwealth v. Lopez, 433 Mass. 722, 725, 727-732 (2001)
- Commonwealth v. Liebenow, 470 Mass. 151, 161-162 (2014)
- Commonwealth v. Kenney, 449 Mass. 840, 857 (2007)
- Commonwealth v. Vives, 447 Mass. 537, 540-541 (2006)
- Commonwealth v. Blache, 450 Mass. 583, 594 (2008)
- Commonwealth v. Marzilli, 457 Mass. 64, 67 (2010)
- Commonwealth v. Brie, 473 Mass. 754 (2016)
- Commonwealth v. St. Louis, 473 Mass. 350, 364 (2015)
- Commonwealth v. Bishop, 296 Mass. 459, 460, 462 (1937)
- Commonwealth v. King, 445 Mass. 217, 219, 240, 243-247 (2005), cert. denied, 546 U.S. 1216 (2005)
- Commonwealth v. Aviles, 461 Mass. 60, 73 (2011)
- Commonwealth v. McCoy, 456 Mass. 838, 845-846, 851-852 (2010)
- Commonwealth v. Arana, 453 Mass. 214, 220-221, 229 (2009)
- Commonwealth v. Stuckich, 450 Mass. 449, 456-457 (2008)
- Commonwealth v. Clark, 446 Mass. 620, 629-630 (2006)
- Commonwealth v. Andrade, 468 Mass. 543, 547 (2014)
- Commonwealth v. Pytou Heang, 458 Mass. 827, 856 (2011)
- Commonwealth v. Garuti, 454 Mass. 48, 52 (2009)
- Commonwealth v. Perez, 460 Mass. 683, 688 (2011)
- Commonwealth v. Bryant, 447 Mass. 494, 501 (2006)
- Commonwealth v. Stroyny, 435 Mass. 635, 639 (2002)
- Commonwealth v. Lattimore, 396 Mass. 446, 450 n.6 (1985)
- Commonwealth v. Ruell, 459 Mass. 126, 136 (2011), cert. denied, 565 U.S. 841 (2011)

- Commonwealth v. Vann Long, 419 Mass. 798, 804 (1995)
- Commonwealth v. Auguste, 414 Mass. 51, 57-58 (1992)
- Tyson v. Trigg, 50 F.3d 436, 448 (7th Cir. 1995), cert. denied, 516 U.S. 1041 (1996)

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