

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Johnson

435 Mass. 113 (2001) · Decided September 14, 2001

SUMMARY

The Massachusetts Supreme Judicial Court reviewed a defendant’s convictions for first-degree murder and related firearm and assault offenses. The court held that erroneous jury instructions concerning the intent required for deliberately premeditated murder created a substantial likelihood of a miscarriage of justice, reversed the first-degree murder conviction, and remanded that indictment for a new trial. It affirmed the remaining convictions and the denial of the motion for a new trial as to those convictions.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Cowin, J.
JURISDICTION	Massachusetts
DECIDED	September 14, 2001
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The defendant appealed from convictions following a jury trial and from the denial of his motion for a new trial. The Supreme Judicial Court reversed the first-degree murder conviction and remanded that indictment for a new trial, while affirming the remaining convictions and the denial of the new-trial motion as to those convictions.
STANDARD OF REVIEW	For sufficiency, whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements beyond a reasonable doubt. Unpreserved instructional errors were reviewed under the substantial-likelihood-of-a-miscarriage-of-justice standard. Ineffective-assistance claims were reviewed under Commonwealth v. Saferian, with deference to the trial judge's ruling on the new-trial motion. Admission of prior recorded testimony was reviewed under the substantially-same-issues and similar-motivation standard.
PRECEDENTIAL VALUE	Published precedential opinion of the Massachusetts Supreme Judicial Court.
PARTIES	Curtis Johnson v. Commonwealth

TOPICS

jury instructions

criminal procedure

standard of review

ineffective assistance

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

appellate procedure

evidence

ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to permit a finding that Johnson deliberately premeditated Domiano's killing.
2. Whether the jury instructions improperly permitted conviction of deliberately premeditated murder based on the second or third prongs of malice rather than the specific intent to kill required for first-degree murder.
3. Whether trial counsel rendered ineffective assistance by failing to investigate Ellison's medical condition and medications, by presenting dual misidentification and mental-impairment defenses, or by requesting a voir dire of Bynum.
4. Whether Bynum's prior recorded voir dire testimony was admissible consistently with the defendant's confrontation rights.
5. Whether the convictions other than first-degree murder and the denial of the motion for a new trial should be affirmed.

HOLDINGS

1. The evidence was sufficient to submit deliberate premeditation to the jury because Johnson obtained and used a handgun, pursued the victims, and fired successive shots with a revolver that required a separate trigger pull or hammer cocking for each shot.
2. The instructions created a substantial likelihood of a miscarriage of justice because they included the second and third prongs of malice within the definition of deliberate premeditation and did not clearly require the specific intent to kill necessary for first-degree murder.
3. Counsel's failure to investigate and further cross-examine Ellison regarding his illnesses and medications did not constitute ineffective assistance because the other identification evidence was sufficiently strong and the defendant was not deprived of an otherwise available, substantial ground of defense.
4. Counsel was not ineffective in presenting both misidentification and mental-impairment defenses because the defendant understood and consented to the strategy, and the strategy was not manifestly unreasonable when undertaken.
5. Counsel's decision to request a voir dire of Bynum was not manifestly unreasonable because it sought to suppress damaging statements based on voluntariness and ultimately prevented the most damaging admission from reaching the jury.
6. Bynum's prior recorded testimony was properly admitted because the defendant had a reasonable opportunity and similar motivation to cross-examine her at the voir dire on the substantially same issue

presented at trial: whether Johnson made the statements.

KEY QUOTATIONS

“The charge relieved the Commonwealth of its burden to prove deliberate premeditation beyond a reasonable doubt. We cannot assume in fairness that the error made no difference in the jury's verdict.” (121-122)

“Prior recorded testimony is admissible “in a proceeding addressed to substantially the same issues as in the current proceeding, with reasonable opportunity and similar motivation on the prior occasion for cross-examination of the declarant by the party against whom the testimony is now being offered.”” (135)

FACTUAL BACKGROUND

After arguing with an off-duty police officer at a Worcester restaurant, Johnson and his companions left the restaurant. Johnson later confronted the officer and his friends outside while armed with a handgun and shot Albert Toney, Robert Domiano, Jr., and John Ellison in rapid succession. Domiano died, and Toney and Ellison survived. The evidence also showed that Johnson had consumed substantial amounts of alcohol and appeared intoxicated, which became relevant to the defense theory of mental impairment and to the jury instructions on intent and malice.

PROCEDURAL HISTORY

A jury convicted Johnson of first-degree murder based on deliberate premeditation, assault-related offenses, and firearms offenses. The trial judge denied his motion for a new trial. On direct appeal, the Supreme Judicial Court reviewed the sufficiency of the evidence, jury instructions, ineffective-assistance claims, prosecutorial argument, admission of prior recorded testimony, and requested relief under Massachusetts General Laws chapter 278, section 33E.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The first-degree murder conviction is reversed, the verdict is set aside, and the murder indictment is remanded for a new trial. The remaining convictions are affirmed, as is the denial of the motion for a new trial insofar as it concerns those convictions.

CASES CITED

- Commonwealth v. Borans, 379 Mass. 117, 134 (1979)
- Commonwealth v. Latimore, 378 Mass. 671, 677 (1979)
- Jackson v. Virginia, 443 U.S. 307, 319 (1979)
- Commonwealth v. Palmariello, 392 Mass. 126, 143 (1984)
- Commonwealth v. Caine, 366 Mass. 366, 374 (1974)
- Commonwealth v. Tucker, 189 Mass. 457, 495 (1905)

- Commonwealth v. Chipman, 418 Mass. 262, 269 (1994)
- Commonwealth v. Stewart, 398 Mass. 535, 541 (1986)
- Commonwealth v. Simpson, 434 Mass. 570, 578, 588 & n.13 (2001)
- Commonwealth v. LeClair, 429 Mass. 313, 316 (1999)
- Commonwealth v. Hallet, 427 Mass. 552, 554 (1998)
- Commonwealth v. Vinnie, 428 Mass. 161, 163-164 (1998)
- Commonwealth v. Wright, 411 Mass. 678, 681 (1992)
- Commonwealth v. Squailia, 429 Mass. 101, 107 (1999)
- Commonwealth v. Jenks, 426 Mass. 582, 585 (1998)
- Commonwealth v. Vizcarrondo, 427 Mass. 392, 395-397 (1998), S.C., 431 Mass. 360 (2000)
- Commonwealth v. Lennon, 399 Mass. 443, 446-450 (1987)
- Commonwealth v. Eagles, 419 Mass. 825, 836 (1995)
- Commonwealth v. Nieves, 429 Mass. 763, 770 (1999)
- Commonwealth v. Grace, 397 Mass. 303, 307 (1986)
- Commonwealth v. Plant, 417 Mass. 704, 716-717 (1994)
- Commonwealth v. Satterfield, 373 Mass. 109, 115 (1977)
- Commonwealth v. Lloyd, 45 Mass. App. Ct. 931, 932-933 (1998)
- Commonwealth v. Williams, 25 Mass. App. Ct. 210, 218 (1997)
- Commonwealth v. Degro, 432 Mass. 319, 322 (2000)
- Commonwealth v. Hoilett, 430 Mass. 369, 372 (1999)
- Commonwealth v. Triplett, 398 Mass. 561, 569 (1986)
- People v. Carter, 41 Ill. App. 3d 425, 429 (1976)
- Commonwealth v. White, 409 Mass. 266, 272 (1991)
- Commonwealth v. Haley, 413 Mass. 770, 777-778 (1992)
- Commonwealth v. Daye, 393 Mass. 55, 75 (1984)
- Commonwealth v. Trigones, 397 Mass. 633, 638 (1986)
- Commonwealth v. Meech, 380 Mass. 490, 494-496 (1980)
- Commonwealth v. Dahl, 430 Mass. 813, 814 n.1 (2000)
- Commonwealth v. Basch, 386 Mass. 620, 622 & n.2 (1982)