

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. Mercado

466 Mass. 141 (2013) · Decided August 7, 2013

SUMMARY

The Massachusetts Supreme Judicial Court affirmed Thomas Mercado’s first-degree murder conviction on theories of deliberate premeditation and extreme atrocity or cruelty and affirmed the denial of his motion for a new trial. The court rejected claims concerning ineffective assistance of counsel, closure of a witness-immunity hearing, and erroneous jury instructions on the burden of proof. Exercising review under G. L. c. 278, § 33E, the court held that the evidence was insufficient to support felony-murder based on armed robbery but left the conviction undisturbed because the other theories were adequately supported.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Botsford, J.
JURISDICTION	Massachusetts
DECIDED	August 7, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed from his first-degree murder conviction and from the denial of his motion for a new trial. The appeals were consolidated and reviewed under the Massachusetts Supreme Judicial Court’s extraordinary review authority under G. L. c. 278, § 33E.
STANDARD OF REVIEW	Because the defendant was convicted of murder in the first degree, the court reviewed the conviction and denial of the new-trial motion under G. L. c. 278, § 33E, asking whether there was a substantial likelihood of a miscarriage of justice. Unpreserved instructional and courtroom-closure claims were reviewed under the same standard. Jury instructions were evaluated as a whole from the perspective of a reasonable juror. The denial of an evidentiary hearing on a new-trial motion was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Judicial Court of Massachusetts.
PARTIES	Thomas Mercado v. Commonwealth

TOPICS

criminal procedure ineffective assistance suppression of evidence sixth amendment due process

PRACTICE AREAS

Criminal law Criminal procedure Constitutional law Evidence Appellate procedure

QUESTIONS PRESENTED

1. Whether trial counsel was ineffective in preparing and presenting the motion to suppress statements made during Mercado's interview by law enforcement in Puerto Rico.
2. Whether closing the courtroom during a hearing on the Commonwealth's witness-immunity petition violated the defendant's Sixth Amendment right to a public trial.
3. Whether the trial judge's misstatements concerning the Commonwealth's burden of proof created a substantial likelihood of a miscarriage of justice.
4. Whether the court should exercise its authority under G. L. c. 278, § 33E, to order a new trial because the evidence was insufficient on the felony-murder theory or otherwise warranted relief.
5. Whether the trial judge abused his discretion by denying the motion for a new trial without an evidentiary hearing.

HOLDINGS

1. The defendant did not establish ineffective assistance of counsel or a substantial likelihood of a miscarriage of justice arising from the denial of the motion to suppress. Even assuming the suppression ruling was erroneous, exclusion of the challenged statement would not likely have affected the jury's conclusion because the Commonwealth presented strong independent evidence of guilt and other evidence of consciousness of guilt.
2. Closing the courtroom and excluding the defendant and defense counsel during the Commonwealth's hearing on a witness-immunity petition under G. L. c. 233, § 20E, did not violate the defendant's Sixth Amendment right to a public trial.
3. The trial judge's several slips substituting 'the defendant' for 'the Commonwealth' and omitting 'not' did not create a substantial likelihood of a miscarriage of justice when the charge was viewed as a whole.
4. The evidence was insufficient to support Mercado's first-degree murder conviction on a felony-murder theory predicated on armed robbery.
5. The first-degree murder verdict remained undisturbed because the evidence was sufficient to support the theories of deliberate premeditation and extreme atrocity or cruelty, even though the felony-murder theory was unsupported.

KEY QUOTATIONS

"The closed hearing on the witness immunity application thus did not violate the defendant's right to a public trial." (152)

“Because a reasonable juror could not have misunderstood or have been misled by these slips of tongue, we conclude that the errors in the jury instructions did not create a substantial likelihood of a miscarriage of justice.” (154)

“The record contains no evidence that the defendant was robbing or attempting to rob the victim (or anyone else) at the time of the shooting.” (155)

FACTUAL BACKGROUND

The victim was shot and killed in the hallway of a Brockton apartment building on the night of February 6 or early morning of February 7, 2006. Multiple witnesses placed Mercado at the apartment, in the hallway immediately before the shooting, and fleeing afterward; one witness testified that she saw him fire the gun. The victim sustained six gunshot wounds, and six casings fired from the same weapon were recovered in the hallway. Evidence also showed that Mercado had traveled to Puerto Rico after the shooting and had used the name Ariel Rivera.

PROCEDURAL HISTORY

A Superior Court jury convicted Mercado of murder in the first degree on theories of deliberate premeditation, extreme atrocity or cruelty, and felony-murder. While his direct appeal was pending, he filed a motion for a new trial alleging ineffective assistance of counsel; the trial judge denied the motion without an evidentiary hearing. The Supreme Judicial Court affirmed the conviction on the deliberate-premeditation and extreme-atrocity-or-cruelty theories and affirmed the denial of the new-trial motion, while concluding that the evidence was insufficient to support felony-murder based on armed robbery.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Alicea, 464 Mass. 837, 840, 842 (2013)
- Commonwealth v. Gomez, 450 Mass. 704, 711 (2008)
- Commonwealth v. Larkin, 429 Mass. 426, 432-436 (1999)
- Commonwealth v. Gonzalez, 443 Mass. 799, 808-809 (2005)
- Commonwealth v. Wright, 411 Mass. 678, 682 (1992)
- Commonwealth v. MacKenzie, 413 Mass. 498, 517 (1992)
- Commonwealth v. Brum, 438 Mass. 103, 106 n.4 (2002)
- Commonwealth v. Powell, 459 Mass. 572, 583 (2011), cert. denied, 132 S. Ct. 1739 (2012)
- Commonwealth v. Carrion, 407 Mass. 263, 277 (1990)
- Commonwealth v. Toney, 385 Mass. 575, 583 (1982)
- Commonwealth v. Dyer, 460 Mass. 728, 735-737 nn.7 & 8 (2011), cert. denied, 132 S. Ct. 2693 (2012)
- Commonwealth v. Figueroa, 451 Mass. 566, 578 (2008)

- Smith v. Commonwealth, 386 Mass. 345, 349 (1982)
- Commonwealth v. Clemente, 452 Mass. 295, 318 (2008), cert. denied, 555 U.S. 1181 (2009)
- Commonwealth v. Simpson, 370 Mass. 119, 121 (1976)
- Commonwealth v. Grant, 418 Mass. 76, 84-85 (1994)
- Commonwealth v. Trapp, 423 Mass. 356, 361, cert. denied, 519 U.S. 1045 (1996)
- Commonwealth v. Glacken, 451 Mass. 163, 168-169 (2008)
- Commonwealth v. Cundriff, 382 Mass. 137, 153 (1980), cert. denied, 451 U.S. 973 (1981)
- Commonwealth v. Britto, 433 Mass. 596, 608 (2001)
- Commonwealth v. Licata, 412 Mass. 654, 660 (1992)
- Commonwealth v. Nolin, 448 Mass. 207, 220 (2007)
- Commonwealth v. Chipman, 418 Mass. 262, 270 n.5 (1994)
- Commonwealth v. Barbosa, 463 Mass. 116, 135 (2012)
- Commonwealth v. Smith, 459 Mass. 538, 548 (2011)
- Commonwealth v. Woods, 419 Mass. 366, 372-373 (1995)
- Pennsylvania v. Muniz, 496 U.S. 582, 601 (1990) (opinion of Brennan, J.)
- Commonwealth v. Clark, 446 Mass. 620, 628 n.6 (2006)
- People v. Margolies, 125 Misc. 2d 1033, 1041 (N.Y. Sup. Ct. 1984)