

Commonwealth v. Baez

Appeals Court of Massachusetts

January 24, 2022, Entered

20-P-487

Reporter

2022 Mass. App. Unpub. LEXIS 59 *; 100 Mass. App. Ct. 1121; 180 N.E.3d 1037; 2022 WL 200097

COMMONWEALTH vs. FREIDY BAEZ.

Notice: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See *Chace v. Curran*, 71 Mass. App. Ct. 258, 260 n.4, 881 N.E.2d 792 (2008).

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Judges: Vuono, Sullivan & Kinder, JJ. [*1]

Opinion

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

A Superior Court jury convicted the defendant of the voluntary manslaughter of George Sanchez as a lesser included offense of murder in the second degree. The jury heard evidence that the defendant took a folding knife from his pocket and stabbed Sanchez twice during a fist fight, once in the left forearm and once in the upper left thigh. The wound to Sanchez's thigh transected his femoral artery, which caused him to bleed to death. On appeal, the defendant claims that the

judge erred in restricting his closing argument and failing to instruct the jury on the lesser included offense of involuntary manslaughter. Because we conclude that the jury should have been instructed on the lesser included offense of involuntary manslaughter, we vacate the judgment of conviction and remand to the Superior Court.

Discussion. 1. *Closing argument.*¹ After the evidence closed, defense counsel sought the judge's permission to argue to the jury that the defendant feared that Sanchez would use the concrete platform and steps as a weapon by bashing the defendant's head against them. The judge expressed skepticism that the evidence supported such [*2] an inference, but gave defense counsel an opportunity to review the evidence overnight before she ruled. The following day, after hearing further argument, the judge denied the defendant's request, reasoning that it "was very clear that [the defendant's] concern was that he was being repeatedly punched . . . [b]ut if he had had the concern that his head was getting hit off the concrete . . . then he was free to say so and didn't." The defendant claims this was an improper restriction on his right to marshal the evidence during his closing argument. Because defense counsel objected to the judge's ruling, we review for prejudicial error. See *Commonwealth v. Holbrook*, 482 Mass. 596, 603, 125 N.E.3d 696 (2019).

We discern no error in the judge's ruling. The defendant testified that Sanchez "jumped on top of [him] . . . grabbed [him] here by the neck — the collar," and repeatedly "punch[ed] [him] hard on the head, the mouth." The defendant was afraid that Sanchez "was going to mess up [his] head," and that Sanchez "was going to kill [him]." No witness testified that Sanchez used the concrete platform or steps as a weapon, the physical evidence did not indicate such use, and the defendant did not testify that he feared Sanchez would do so. We agree with [*3] the judge's assessment that the reasonable inference from the defendant's testimony was that "his concern was that he was being repeatedly punched." The defendant's proposed argument would have required the jury to "speculate on a hypothesis not supported by the evidence." *Commonwealth v. Paton*, 31 Mass. App. Ct. 460, 464, 579 N.E.2d 177 (1991).

2. *Involuntary manslaughter.* The defendant's theory of the case was that he stabbed Sanchez while acting in self-defense. The judge agreed to instruct the jury on self-defense and the lesser included offense of voluntary manslaughter, but she declined to give an instruction on the lesser included offense of involuntary manslaughter, reasoning that the defendant admitted he intentionally stabbed

¹ Because the defendant claims that he is entitled to a new trial due to the restriction of his closing argument, we address the argument even though we vacate the judgment of conviction on a different issue.

This is so because a reasonable person is presumed to have general knowledge of the location and vital importance of organs in those areas of the body. See *Commonwealth v. Hadley*, 78 Mass. App. Ct. 405, 409 n.5, 939 N.E.2d 787 (2010). However, we have found no authority for the proposition that a single stab wound to an arm or a leg creates a plain and strong likelihood of death.

We do not suggest that a plain and strong likelihood of death can be determined by a bright line dividing the human torso from its extremities. Knife wounds to extremities, like the wound to Sanchez's leg, can cause death. It is a fact-based determination that will be different in each case. Here, however, when we view the facts in the light most [*6] favorable to the defendant, it was not obvious that stabbing Sanchez in the leg would cause his death. Therefore, the involuntary manslaughter instruction should have been given.

We are not persuaded by the Commonwealth's argument that the issue was not preserved because the defendant failed to file a written instruction as the judge requested. Defense counsel orally requested an instruction on involuntary manslaughter at the charge conference. The judge heard argument on the request and considered it, but ultimately decided not to give the instruction. "In these circumstances, the issue was properly preserved for appeal." *Commonwealth v. Vick*, 454 Mass. 418, 423 n.5, 910 N.E.2d 339 (2009).

Conclusion. After careful review of the record, we cannot say with "fair assurance" that "the error did not influence the jury, or had but very slight effect" (quotation omitted). *Commonwealth v. Flebotte*, 417 Mass. 348, 353, 630 N.E.2d 265 (1994). Accordingly, the judgment of conviction of voluntary manslaughter is vacated and the verdict is set aside. Because there was sufficient evidence to support a conviction of involuntary manslaughter, the Commonwealth has the option of moving for resentencing on the lesser included offense, or it may retry the defendant for voluntary manslaughter. See *Commonwealth v. Horne*, 466 Mass. 440, 453, 995 N.E.2d 773 (2013). We remand to the Superior Court for [*7] that purpose.

So ordered.

By the Court (Vuono, Sullivan & Kinder, JJ.²),

Entered: January 24, 2022.

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²The panelists are listed in order of seniority.