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16-P-960

Appeals Court

COMMONWEALTH vs. SCOTT JOSEPH BOLTON.

No. 16-P-960.

Worcester. October 18, 2017. - November 16, 2017.

Present: Massing, Kinder, & Ditkoff, JJ.

Jurisdiction, Of crime. District Attorney. Constitutional Law,
Place of trial. Practice, Criminal, Place of trial,
District Attorney, Plea, New trial.

Indictment found and returned in the Superior Court
Department on November 18, 2011.

Motions for relief from unlawful restraint and for a new
trial, filed on March 24, 2016, were considered by James R.
Lemire, J.

Michael J. Hickson for the defendant.
Donna-Marie Haran, Assistant District Attorney, for the
Commonwealth.

MASSING, J. In 1980 the Legislature decreed that the town
of Bellingham, which is located within Norfolk County, "shall be
considered to be within the jurisdiction of Worcester county"
"[f]or the purpose of all civil and criminal matters."

St. 1980, c. 550, § 3. After pleading guilty in Worcester County Superior Court to an indictment issued by a Worcester County grand jury for an unarmed robbery that he committed in Bellingham, the defendant, Scott Joseph Bolton, filed a motion for relief from unlawful restraint seeking to vacate the conviction and dismiss the indictment on the grounds that the district attorney for the middle district¹ lacked authority to prosecute, and that the Worcester County grand jury lacked jurisdiction to return indictments with respect to, crimes alleged to have occurred in Bellingham. The judge who had accepted the guilty plea having denied his motion, the defendant appeals.² Concluding that the Legislature validly transferred jurisdiction over crimes committed in Bellingham to Worcester County, and that the defendant's indictment and prosecution in Worcester County by the district attorney for the middle district did not violate his constitutional rights, we affirm.

1. Jurisdiction of criminal matters related to Bellingham.

A Worcester County grand jury issued a five-count indictment

¹ "For the administration of the criminal law . . . Worcester county, excluding the town of Athol, [shall constitute] the middle district." G. L. c. 12, § 13, as amended by St. 1980, c. 231, § 1.

² The defendant also appeals from an order denying his motion for a new trial, claiming that his guilty plea was involuntary and that the factual basis for the charge was insufficient.

charging the defendant with unarmed robbery as a habitual offender and four misdemeanor violations of the automobile laws. The robbery took place in a Bellingham bank; the defendant was the getaway driver. Accepting an agreed-upon recommendation, a Superior Court judge sitting in Worcester County sentenced the defendant to a term of six to eight years with respect to the unarmed robbery charge, the Commonwealth agreed to dismiss the habitual offender component of the indictment, and the remaining guilty pleas were placed on file. The defendant contends, as he did in his motion for release from unlawful restraint, Mass.R.Crim.P. 30(a), as appearing in 435 Mass. 1501 (2001), that his guilty plea to the armed robbery indictment should be dismissed on jurisdictional grounds.³

a. Legislative history. Although the town of Bellingham is in Norfolk County, it borders Worcester County, and in 1980 the Legislature placed it within the jurisdiction of Worcester County for criminal and civil matters. In "An Act Adding the Town of Bellingham to the Jurisdiction of the Third District Court of Southern Worcester," the Legislature amended G. L. c. 218, § 1, to remove Bellingham from the jurisdiction of the District Court of western Norfolk (sitting in Wrentham), and to

³ "A jurisdictional defect may be raised at any time, and is not waived by the defendant's guilty plea." Commonwealth v. Wilson, 72 Mass. App. Ct. 416, 418 (2008).

place it within the jurisdiction of the third District Court of southern Worcester (sitting in Milford). See G. L. c. 218, § 1, as amended by St. 1980, c. 550, §§ 1-2. The Legislature further mandated, "For the purpose of all civil and criminal matters related thereto, the town of Bellingham shall be considered to be within the jurisdiction of Worcester county." St. 1980, c. 550, § 3 (emphasis supplied).

About one year before transferring Bellingham to the jurisdiction of Worcester County, the Legislature similarly transferred jurisdiction over the town of Athol, in Worcester County bordering on Franklin County. In "An Act Adding the Town of Athol to the Jurisdiction of the District Court of Eastern Franklin," the Legislature amended G. L. c. 218, § 1, to move Athol from the first District Court of northern Worcester (sitting in Gardner), to the District Court of eastern Franklin (sitting in Orange). See G. L. c. 218, § 1, as amended by St. 1979, c. 343, §§ 1-2. The Legislature further mandated that Athol be considered within the jurisdiction of Franklin County "[f]or the purpose of all civil and criminal matters." St. 1979, c. 343, § 3.

With respect to Athol, however, the Legislature made two additional changes that it did not repeat with respect to Bellingham. First, "[f]or the administration of the criminal law," it specifically included "Franklin county, including the

town of Athol, and Hampshire county," within the northwestern district. G. L. c. 12, § 13, as amended by St. 1980, c. 231, § 1. Second, the Legislature included the voters of Athol within Franklin County for the purpose of electing the district attorney. St. 1980, c. 231, § 2.

b. Criminal jurisdiction. "Massachusetts has generally followed the common law rule that an indictment must be found, and the trial must take place, in the county where the crime occurred." Commonwealth v. Duteau, 384 Mass. 321, 323 (1981). The common law, however, also empowers the Legislature to make provisions for jurisdiction contrary to the general rule. Id. at 323-324. The Legislature's decision to include Bellingham within the jurisdiction of Worcester County "is such a contrary legislative provision." Id. at 324.

In Duteau, the Supreme Judicial Court considered the validity of indictments returned in Franklin County for crimes alleged to have been committed in Athol. It concluded that St. 1979, c. 343, effectively included Athol within Franklin County for the prosecution of criminal cases in the Superior Court. Id. at 324-325. The court further determined that art. 13 of the Massachusetts Declaration of Rights⁴ did not

⁴ "In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen." Article 13 of the Massachusetts Declaration of Rights.

prevent the Legislature from redrawing the grand jury district to move an abutting town into the neighboring county, id. at 326-327, and that the exclusion of residents of Athol from the Franklin County grand jury did not violate the defendants' rights under the Sixth and Fourteenth Amendments to the United States Constitution or art. 12 of the Massachusetts Declaration of Rights. Id. at 328-332.

Likewise, the Legislature has the power to alter jurisdiction over criminal matters to include Bellingham within abutting Worcester County, and effectively did so by enacting St. 1980, c. 550. The exclusion of Bellingham residents from the Worcester County grand jury does not violate the defendant's State or Federal constitutional rights. Duteau, supra.

c. District attorney's authority. The district attorney for the middle district administers the criminal law for Worcester County (excluding the town of Athol). See G. L. c. 12, § 13. As Bellingham is assigned to the jurisdiction of Worcester County for the purpose of all criminal matters, see St. 1980, c. 550, § 3, the district attorney for the middle district and his assistants properly handled the defendant's case.

Citing art. 19 of the Amendments to the Massachusetts Constitution ("The legislature shall prescribe . . . that

district-attorneys shall be chosen by the people of the several districts . . ."), the defendant argues that the district attorney "lacked the constitutional, statutory, and electoral authority to obtain a grand jury indictment against [the defendant] and to prosecute him for a crime committed in the Norfolk [d]istrict." He points out that in Duteau, the court stated, "Most importantly, . . . the Legislature transferred responsibility for the prosecution of crimes occurring in Athol . . . to the district attorney for the northwestern district, made up of Franklin and Hampshire counties." Duteau, supra at 325.⁵ This observation, however, was made in the context of discerning whether the Legislature had intended to include Athol within the jurisdiction of the Franklin County Superior Court, when it had specifically provided only for Athol's inclusion in the District Court of eastern Franklin. Notwithstanding its use of the phrase "[m]ost importantly," the court did not suggest, nor do we infer, that these provisions with respect to the district attorney's responsibilities and election were essential for the transfer of jurisdiction. We are confident the plain meaning of St. 1980, c. 550, evinces the Legislature's intent to

⁵ The court also noted that the Legislature had provided that Athol voters would be included in the electorate for the district attorney for the northwestern district. Duteau, supra at 325 n.6.

transfer jurisdiction of Bellingham criminal matters to Worcester County.

The Legislature has substantial discretion with respect to the office of the district attorney. It "may be regulated, limited, enlarged or terminated according to the demands of public policy." Opinion of the Justices to the House of Representatives, 240 Mass. 611, 613 (1922). This discretion is "subject only to the single constitutional requirement of election by the people of the districts." Ibid.

We conclude that the middle district attorney's prosecution of the crime the defendant committed in Bellingham was within his authority, and that any violation of the constitutional requirement of election by the people does not affect the validity of the defendant's indictment or conviction. The defendant's rights with respect to selection of the grand jury were not violated. See Duteau, 384 Mass. at 327-331. Nor was he prejudiced by the identity of the district attorney and the assistant district attorneys who prosecuted him. See Lykus v. Commonwealth, 432 Mass. 160, 164 (2000) (even assuming assistant district attorneys were without jurisdiction to represent Commonwealth in opposing defendant's motion for new trial, "the defendant has made no showing that he has been prejudiced in any way by the procedure").

Although it remains the case that for nearly four decades the voters of Bellingham have not had a say in electing the district attorney charged with administering the criminal law for their town, the defendant, who is not a Bellingham resident or voter, lacks standing to assert a claim of disenfranchisement on their behalf. See McGlue v. County Commrs. of Essex, 225 Mass. 59, 60 (1916) ("It is a general principle that no one can question the constitutionality of a public act except one whose rights are impaired thereby"); Tax Equity Alliance for Massachusetts v. Commissioner of Rev., 423 Mass. 708, 715 (1996), quoting from Doe v. The Governor, 381 Mass. 702, 704 (1980) ("[O]nly persons who have themselves suffered, or who are in danger of suffering, legal harm can compel the courts to assume the difficult and delicate duty of passing upon the validity of the acts of a coordinate branch of the government").

2. Motion for new trial. a. Voluntariness of guilty plea. Facing the possibility of a mandatory life sentence,⁶ the defendant pleaded guilty based on an agreed-upon sentencing

⁶ Under G. L. c. 279, § 25(a), a defendant convicted of a felony after having previously been convicted and sentenced to two prison terms of three years or more is required to serve the maximum sentence for a third felony. The maximum punishment for unarmed robbery under G. L. c. 265, § 19(b), is a term of life. Had the defendant been convicted of unarmed robbery as a habitual offender, he would have faced a mandatory life sentence.

recommendation that included dismissal of the habitual offender charge. At the plea colloquy, the defendant stated under oath that he was aware of the agreed-upon sentencing recommendation and was satisfied with his attorney's advice and representation. The defendant stated that no one promised him anything other than the agreed-upon recommendation and that no one pressured or coerced him to plead guilty. In his motion for a new trial, however, he claimed through affidavits, contrary to his prior sworn statements, that his plea was the result of plea counsel's coercive tactics, together with plea counsel's promise that the term of probation the defendant was then serving in Rhode Island would run concurrently with the Massachusetts sentence. The defendant offered no affidavit from plea counsel, and the two letters from plea counsel appended to his new trial motion contradict his current claim.⁷

"The defendant's claim of coercion directly contradicts his professions under oath at the time of the plea. . . . Such professions must mean something, and must have consequence, if

⁷ In the letters, plea counsel indicated his willingness to assist the defendant with the Rhode Island matter, but pointed out that "[a]t no time was there an agreement to only accept the plea contingent upon something happening in another state" and that the choice before the defendant was either to accept the plea agreement or go to trial, risking the possibility of a life sentence. Counsel concluded, "You chose the [p]lea. You did this based only on these factors. In doing so I believe that you made the wisest choice."

guilty plea colloquies are to be more than stylized and empty formalities." Commonwealth v. Hiskin, 68 Mass. App. Ct. 633, 640 (2007). The judge was free to reject the self-serving affidavits the defendant offered in support of his new trial motion. Ibid. See Commonwealth v. Lopez, 426 Mass. 657, 661 (1998). The judge could also consider the letters from plea counsel, and the lack of any supporting affidavit from plea counsel, in rejecting the defendant's claim of ineffective assistance. See Commonwealth v. Goodreau, 442 Mass. 341, 354 (2004); Commonwealth v. Martinez, 86 Mass. App. Ct. 545, 550-551 (2014). We discern no abuse of discretion in the denial of the defendant's motion for a new trial, without an evidentiary hearing,⁸ on this basis.

b. Factual basis. The defendant also argued in his new trial motion that the judge should not have accepted his guilty plea to unarmed robbery because the prosecutor's recitation of the facts did not show that the robbery involved "force and violence" or "assault and putting in fear" as required under G. L. c. 265, § 19(b). We disagree.

Before accepting a guilty plea, a judge must be satisfied that a factual basis for the charge exists. See Mass.R.Crim.P.

⁸ An evidentiary hearing is not required unless the defendant raises a "substantial issue," based on the seriousness of the claim and the adequacy of his showing. Commonwealth v. Chatman, 466 Mass. 327, 334 (2013).

12(c)(5), as appearing in 470 Mass. 1501 (2015). See also Commonwealth v. Armstrong, 88 Mass. App. Ct. 756, 758 (2015). The prosecutor's recitation of the facts need not establish each element of the crime beyond a reasonable doubt; "[r]ather, a plea judge 'need determine only whether the evidence which he had heard, plus any information he has obtained in the plea hearing, is sufficient, when considered with reasonable inferences which may be drawn therefrom, to support the charge to which the defendant is offering a plea of guilty.'" Ibid., quoting from Commonwealth v. Jenner, 24 Mass. App. Ct. 763, 773 (1987).

The facts presented at the plea colloquy, to which the defendant admitted, established that the defendant's coventurer entered the bank and handed the teller a note demanding, "Give me all the money. No dye packs and no bait money. Don't make a scene." The teller complied. From these facts, the judge could readily infer that the coventurer engaged in "objectively menacing conduct" that "in fact instilled fear in [the teller], who responded by immediately handing over the cash." Commonwealth v. Joyner, 467 Mass. 176, 188 (2014). The judge did not err in accepting the plea.

Order denying motion for
release from unlawful
restraint affirmed.

Order denying motion for new

trial affirmed.