Case Brief – Christine Graham

Com. v. Cotto

752 N.E. 2d 768, 52 Mass. App. Ct. 225

**Facts:** There was an ongoing feud between the defendant’s family and Francisco Martinez. William Cotto’s brother Garribel Bautista was brutally killed by Francisco Martinez and found dead on January 3,1997. Hours later in retaliation, Cotto set fire to Martinez’s apartment. Shirley Suarez, Martinez’s friend was at Martinez’s apartment when she heard glass break and upon her investigating the source of the noise, saw a white plastic bottle that had set fire to the apartment. Shirley had recognized the defendant amongst the two other vandals, when she had ran to the back door. Cotto’s arson created a lot of damage.

One week later Cotto kidnapped Martinez’s girlfriend, Nilsa Wong. He threatened her with a baseball bat, stating that he should beat her to leave Martinez a message. He then admitted to her of his arson of Martinez’s apartment.

**Procedural History:** The case started at the Superior Court Department, Suffolk County for charges of assault with intent to murder, breaking and entering in nighttime with intent to commit murder, arson, assault with a dangerous weapon, and kidnapping. The defendant appealed to the Appeals Court of Massachusetts, Suffolk, claiming the judge provided jury erroneous instructions on the breaking and entering count and abused his discretion by joining two sets of indictments for trial.

**Issue:** Did the judge err in instructing the jury on breaking and entering, and abuse his discretion by joining two sets of indictments?

**Rationale:** Justice Kantrowitz of The Appeals Court of MA addresses the defendant’s first claim of error by the trial judge. Justice Kantrowitz quoted the trial judges statement to the jury as; “An entry is the unlawful making of one’s way into a dwelling house of another. Entry occurs if any part of the defendant’s body, even a hand or foot or any instrument or weapon controlled by the defendant, physically enters the dwelling house.” Justice Kantrowitz then pointed out that the trial judge left out, “... in the unusual facts of this case, entry can be found only where the instrument that entered is intended for use in the commission of the felony within.” He then assured that the error was harmless. Com. v. Gagnon, 718 N.E. 2d 1254 (1999)

The second claim by the defendant is of an unfair trial from the joinder of two sets of indictments. These consist of 1. Of arson, breaking and entering, and assault with intent to murder, for the indictment of January 4, and 2. Of kidnapping and assault by means of a dangerous weapon, for January 10. Justice Kantrowitz cites Com. v. Wilson, 693 N.E. 2d 158 (1998), that “the trial judge shall join the charges for trial unless he determines that joinder is not in the best interests of justice.” The key element in the joinder is the defendant’s motive. The January 4 arson and the January 10 kidnapping were to revenge on Martinez. Cotto admits this to be so when he had confessed it to Martinez’s girlfriend Nilsa Wong.

**Holding:** No, the judge did not err in instructing the jury on breaking and entering nor did he abuse his discretion by joining two sets of indictments.

**Disposition:** The Appeals Court of Massachusetts affirms trial court decisions