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25-P-1208

Appeals Court

COMMONWEALTH vs. SHYAM KHADGI.

No. 25-P-1208.

Middlesex. July 13, 2026. - September 24, 2026.

Present: Ditkoff, Hand, & Grant, JJ.

Assault and Battery. Constitutional Law, Confrontation of witnesses, Harmless error. Error, Harmless. Practice, Criminal, Harmless error, Hearsay, Confrontation of witnesses, Motion in limine. Evidence, Spontaneous utterance.

Complaint received and sworn to in the Cambridge Division of the District Court Department on June 6, 2024.

The case was heard by Matthew J. Nestor, J.

Joseph Visone for the defendant.
Mallorie Sckerl, Assistant District Attorney, for the Commonwealth.

DITKOFF, J. The defendant, Shyam Khadgi, appeals from a conviction, after a jury-waived trial in the District Court, of assault and battery on a family or household member, G. L. c. 265, § 13M. A police officer witnessed the assault and

battery, and the defendant testified in his own defense that the victim was his girlfriend, with whom he had lived for seven years. The defendant challenges, as testimonial hearsay, the admission of the victim's statements through the police officer. We write to reiterate what the Supreme Judicial Court has held, that the analysis of whether a constitutional error is harmless beyond a reasonable doubt ordinarily includes consideration of the evidence adduced in the defendant's case. See, e.g., Commonwealth v. Mendes, 463 Mass. 353, 364 (2012). In that light, any error here is harmless beyond a reasonable doubt, and thus we affirm.

1. Background. The Commonwealth's case was presented entirely through the responding Cambridge police officer. Shortly before 2 A.M., the officer was walking through Harvard Square when he saw the defendant striking a woman. The defendant struck her in the face and arms ten to fifteen times. He struck her "[h]ard enough to lift his foot off the ground." The officer separated them, arrested the defendant, and called an ambulance.

The victim was "[e]xtremely emotionally distraught" and unable at first to speak to the officer. The officer saw that "[h]er face was bruised and she was crying." Photographs authenticated by the officer showed large bruises on the victim's face and scratches on her arm.

After three to four minutes, an ambulance arrived, and the victim began receiving medical care. At this point, she was able to be interviewed, although "[s]he was still very emotional." She told the officer "that she was being beat before [he] arrived for about eight minutes, and that she was kicked in the buttocks, and that it hurt." "She said that they have been dating for seven years."

The defendant testified in his own defense. He stated that the victim's friend informed him by text message that the victim was drunk, so he went to pick her up. They argued and "she started hitting [him] inside the building." He "was grabbing her arms to take her home," and "trying to defend." Although the defendant denied punching the victim, he also said, "It's not like I punch her so hard," and admitted that he believed he caused her injuries. The defendant described the victim as his "girlfriend" and testified that they "stayed in the same house for like seven years."

Prior to trial, the Commonwealth and the defendant filed competing motions in limine regarding the admissibility of the victim's statements to the officer. The defendant specifically objected on the ground that their admission would violate his confrontation rights. After a District Court judge¹ held a voir

¹ The judge who ruled on the motions in limine was not the trial judge.

dire of the police officer, the defendant argued that the statements were not admissible as excited utterances, and that they would be inadmissible hearsay under Crawford v. Washington, 541 U.S. 36, 68-69 (2004), in any event. The motion judge ruled that they were admissible. The defendant also objected when the statements were introduced at trial.

2. Harmlessness. The defendant does not challenge on appeal the motion judge's ruling that the victim's statements were excited utterances, but he does contend that they were testimonial hearsay and thus their admission violated his constitutional confrontation rights. By the time that the victim spoke to the officer, the defendant was already in custody, and the victim was receiving medical treatment. The officer had witnessed the attack personally, and there was no reason to believe that anyone other than the defendant was involved. In these circumstances, the defendant has a strong argument that the victim's statements were testimonial. See Commonwealth v. Rand, 487 Mass. 811, 826 (2021) (statements testimonial where "the victim was about to go to the hospital, where the defendant would be unlikely to find her, and she would be accompanied by a police officer to boot"); Commonwealth v. Rodriguez, 90 Mass. App. Ct. 315, 326 (2016) (statements testimonial where "the defendant was no longer on the scene," "they were not necessary to enable the police to understand or

control an ongoing emergency or to obtain medical care for the victim," and "they related exclusively to past events, and were not made to enable the police to secure the scene or to apprehend the defendant").

We need not resolve this question, however, as any error was harmless beyond a reasonable doubt. "Where, as here, the defendant's rights were preserved through objection at trial, 'we evaluate the admission of constitutionally proscribed evidence to determine whether it was harmless beyond a reasonable doubt'" (footnote omitted). Commonwealth v. Gordon, 496 Mass. 554, 584-585 (2025), quoting Rand, 487 Mass. at 814-815. "When evaluating whether an error is harmless, we must decide 'on the totality of the record before us, weighing the properly admitted and the improperly admitted evidence together, whether we are satisfied beyond a reasonable doubt that the tainted evidence did not have an effect on the [trier of fact]'" Commonwealth v. Encarnacion, 105 Mass. App. Ct. 46, 54 (2024), quoting Commonwealth v. Gumkowski, 487 Mass. 314, 322 (2021).

Here, there can be little question that any error was harmless concerning whether the beating happened, and the defendant does not contend otherwise. The police officer personally witnessed the defendant strike the victim in the face and arms at least ten times with considerable force. The

photographs of the victim plainly show that she had large bruises on her face and scratches on her arms. The victim's confirmation of what the officer witnessed "was harmless because it was duplicative of the properly admitted evidence." Rand, 487 Mass. at 826. Accord Commonwealth v. Hobbs, 482 Mass. 538, 559 (2019). In closing argument, the Commonwealth relied primarily on the officer's personal observations and the photographs to establish that the beating happened. See Commonwealth v. Trotto, 487 Mass. 708, 731 (2021).²

The Commonwealth, however, also had to prove that the defendant and the victim were family or household members. See Commonwealth v. Dustin, 476 Mass. 1003, 1004 (2016). Specifically, the Commonwealth had to prove that they "are or have been in a substantive dating or engagement relationship." G. L. c. 265, § 13M (c) (iii).³ In this regard, the only

² Of note, the judge stated that a felony charge also tried by the Commonwealth was supported only by the excited utterance, and then acquitted the defendant of that charge. Although the acquittal is impounded, see G. L. c. 276, § 100C, "[t]he impoundment [may be] lifted . . . to the extent necessary in resolving the case." Commonwealth v. Pina, 498 Mass. 43, 55 n.12 (2026), quoting Commonwealth v. Gelin, 494 Mass. 777, 779 n.5 (2024).

³ Alternately, the Commonwealth can prove the requisite relationship by showing that the defendant and the victim "are or were married to one another" or "have a child in common." G. L. c. 265, § 13M (c) (i)-(ii). These paths were inapplicable here.

evidence in the Commonwealth's case came from the officer's recounting of the victim's statements.

In determining whether an error is harmless, however, we do not look solely to the Commonwealth's case, but rather "consider[] the totality of the record." Commonwealth v. Carleton, 497 Mass. 11, 30 (2026). Accord Commonwealth v. Rodrigues, 104 Mass. App. Ct. 410, 416-417 (2024). Indeed, we have on occasion relied on a defendant's testimony in determining that an error was harmless. See, e.g., Commonwealth v. Lugo, 104 Mass. App. Ct. 309, 321 (2024); Commonwealth v. Santiago, 41 Mass. App. Ct. 916, 917 (1996).

Directly on point is Mendes, 463 Mass. 353. In that case involving charges of possession of cocaine and marijuana with the intent to distribute, the Commonwealth proved the nature of the drugs seized through certificates of drug analysis. Id. at 354, 358. Those certificates were subsequently held to be inadmissible testimonial hearsay by the United States Supreme Court in Melendez-Diaz v. Massachusetts, 557 U.S. 305, 307-311 (2009). The defendants, however, had testified at trial to using and owning the drugs in question to advance their argument that the drugs were for personal use. Mendes, supra at 357-358. On appeal, we held that, in determining harmless, it was inappropriate for us to consider the defendants' testimony. Commonwealth v. Mendes, 78 Mass. App. Ct. 474, 480 (2010).

The Supreme Judicial Court took further appellate review and reached the opposite conclusion. The Supreme Judicial Court stated, "Our review encompasses both the Commonwealth's and the defendant's case." Mendes, 463 Mass. at 361. The court rejected the argument that, because "it would be virtually impossible to say whether or how the defendants would have testified had the error not occurred," the defendants' testimony should be disregarded. Id. at 362.⁴ Instead, "we consider the defendants' testimony along with the 'totality of the record,' in determining that the admission of the [testimonial hearsay] was harmless beyond a reasonable doubt." Id. at 364. The court concluded that the error was harmless beyond a reasonable doubt, as "[e]ach defendant testified that the substances seized in his room were cocaine and marijuana." Id. at 361.

Here, the defendant testified that the victim was his girlfriend and that they lived together for seven years. This testimony amply demonstrated the requisite relationship. See Dustin, 476 Mass. at 1004. Indeed, the defendant raised no challenge to this element at trial or during his closing

⁴ The court set out a limited exception in certain cases where evidence was unlawfully seized and should have been suppressed. Mendes, 463 Mass. at 363. In that circumstance, "where the defendant's testimony was prompted by and offered in response to the content of the improperly admitted evidence," the defendant's testimony would itself be tainted by the unlawful search or seizure. Id. See Commonwealth v. Charros, 443 Mass. 752, 766, cert. denied, 546 U.S. 870 (2005).

argument. Accordingly, the admission of the victim's statements, if error, was harmless beyond a reasonable doubt. See Mendes, 463 Mass. at 361.

Judgment affirmed.