

COMMONWEALTH v. DIGIAMBATTISTA
442 Mass. 423 (2004)

Valerio DiGiambattista was charged with of burning down a house that belonged to his former landlord, Angelo Paolini. DiGiambattista, his girlfriend (later fiancée) and her children had lived in the house for an unspecified number of years before choosing to move out in March of 1998. DiGiambattista had opted to withhold his rental payments, however, during the last year of his tenancy in response to Paolini's failure to make promised necessary repairs to the premises. Prior to vacating the house, DiGiambattista changed the locks and he and his mother kept the only copies of the key to the front door. Approximately three days after DiGiambattista moved out, the house burnt down. Fire inspectors determined that the blaze was the result of two separate fires, one that had been set using an accelerant near or in a closet, and one that had been set in the kitchen sink.

DiGiambattista was initially questioned by police the night following the fire, and was released. One month after the fire, DiGiambattista was brought in for further questioning. He was Mirandized and executed a written waiver of his rights. During this second interrogation, officers told DiGiambattista that he was their main suspect, and that they had a witness placing him at the scene of the fire. Throughout this, DiGiambattista denied that he was at the scene of the fire and when asked, agreed to take a lie detector test.

After DiGiambattista agreed to a polygraph, which of course the police never intended to administer, a new officer entered the room. This officer carried a thick folder and two videotapes. The folder was filled with blank paper and miscellaneous unrelated news clippings. The videotapes were labeled with the address of the property and the name of the construction company next door. The officer then contrived to "confront" DiGiambattista with the "evidence" against him. The officer then played the role of "good cop" and tried to downplay the incident and empathize with DiGiambattista as a strategy to elicit a confession. DiGiambattista still maintained that he was not at the scene. Finally, DiGiambattista was left alone with the officer who had brought in the tapes who proceeded to confront him with "the evidence" against him again and offer him face-saving explanations for his actions. DiGiambattista then confessed to setting the fire, and gave a detailed explanation of how he set the fire and drew diagrams for the officer. This confession was not recorded in any way. Further investigation showed that DiGiambattista's confession was inconsistent with the evidence found at the scene of the fire, making it highly improbable that DiGiambattista was actually the one who had set the fire.

At the trial court level, DiGiambattista moved for a required finding of not guilty, which was denied by the trial judge. On appeal, DiGiambattista asked that the corroboration rule, set out in Commonwealth v. Forde, 392 Mass. 453 (1984), be expanded to require that his confession be corroborated with evidence that he was

the actual perpetrator of the crime. The court held that this expansion was unnecessary, and that even if the rule was expanded, there was corroboration in this case.

More importantly, however, DiGiambattista challenged the voluntariness of his confession. He filed a motion to suppress at the trial court level arguing that trickery was used to obtain his confession. The motion judge had found that there had been no explicit promises of leniency in their “trickery” to obtain the confession. On appeal, the Supreme Judicial Court found that the combination of an implied promise of leniency, minimization, fake tapes, and further trickery all led to the conclusion that the Commonwealth did not and could not meet its burden to prove that the confession was voluntary.

In reaching this conclusion, the Court reviewed its past decisions regarding the use of trickery by the police. The Court noted that it had issued a staunch disapproval of the use of deliberately false statements to secure a confession twenty five years ago in Commonwealth v. Jackson, 377 Mass. 666 (1979), but had also consistently held that the use of such statements does not compel suppression. Rather, the Court stated that use of false statements is to be considered part of the totality of circumstances in a determination of the voluntariness of a statement, but alone, without further indicia of involuntariness, will not ordinarily prompt suppression. The Court then turned to current research regarding false confessions and related this body of research to the false statements and other coercive elements in the interrogation of DiGiambattista that constituted implied promises of leniency and may have prompted his confession. The Court was clear, however, that they were not seeking to establish whether or not DiGiambattista’s confession was false, but instead simply whether or not it was voluntary.

After concluding that the Commonwealth had not met its burden of proof on the issue of voluntariness, the Court chose to use the case as an opportunity to address the issue of requiring electronic recordings, an issue that had been briefed by the parties and various amici. The Court posited that the case provided a useful illustration of the need for there to be better preservation of the details of an interrogation for adequately assessment of the voluntariness of any statements that result. The Court then suggested that a recording of DiGiambattista’s interrogation would have greatly aided their analysis.

After a review of prior cases where the Court had addressed the issue of recording interrogations, the Court decided not to require that all confessions be electronically recorded. It did, however, hold that if there is not an audiotape of a confession or statement made during a custodial interrogation, a defendant may request a jury instruction that the Court has stated a preference that confessions be recorded. Further, the jury may be instructed to weigh the evidence of such a confession with great caution and care due to the absence of a recording. Finally, if the voluntary nature of the confession is at issue, the jury can be further

instructed that the absence of a recording permits them to conclude that the Commonwealth cannot prove voluntariness beyond a reasonable doubt. There was no such instruction in the case at hand. The Court, therefore, reversed the conviction and remanded the case to Superior Court.