*Commonwealth v. Salazar*, 481 Mass. 105 (2018) [[Full Opinion](http://masscases.com/cases/sjc/481/481mass105.html)]

Summary by Katy Krywonis, CAFL Training Unit

This case is a reminder that clients have the constitutional right to make fundamental decisions about their cases, like choosing to testify. The defendant was charged with murder. Trial counsel pursued alternative defenses: (1) innocence, and (2) intoxication. The defendant testified and denied killing the victim. Trial counsel “soft pedaled” the intoxication defense so that she did not undermine the primary innocence defense. The defendant was convicted of murder in the first degree.

His appellate counsel faulted trial counsel’s approach, arguing that the defendant’s testimony was “fantastical and would not have been credited by the jury.” The SJC noted that “although that may be so, the decision whether to testify is the prerogative of the accused. Defense counsel may sometimes disagree with a defendant’s decision to testify and may provide advice to assist the defendant in that decision.” (Citations omitted).

To advise a client about testifying, counsel should evaluate the information the client can present and weigh the benefits of the testimony against the potential harm. In CAFL cases, counsel must consider the potential harm if a parent client *does not* testify because it is unlikely the court will return custody of a child to a parent who does not testify. And DCF will likely call the parent as its own witness, and the parent must be prepared for that possibility. Counsel must also consider the risk if a parent client *does* testify, including when they face or could face criminal charges related to the care and protection proceeding because the District Attorney and other parties could have access to the hearing record. There is a summary of *Care and Protection of M.C.*, 479 Mass. 246 (2018), discussing this on the CPCS website at <https://www.publiccounsel.net/cafl/professional/relevant-statutes-and-case-law/summaries-of-recent-decisions/>.

The SJC went on to remark that “ultimately, should the defendant decide to testify to his or her side of the story, respect for the defendant’s personal autonomy requires that the defendant’s own attorney not undermine that decision.” But the client’s “personal autonomy” is not without limit. Massachusetts Rule of Professional Conduct 3.3 prohibits counsel from offering evidence counsel knows is false. For more on this topic, see Chapter 22, Special Considerations in Representing Parents, in MCLE’s Child Welfare Practice in Massachusetts.