

CASE SUMMARY

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Date: April 15, 2014

Of: COMMONWEALTH vs. Adolfo MARTE

In the case styled Commonwealth vs. Adolpo Marte, Slip Opinion No. 09-P-776 (August, 2013), the Massachusetts Appellate Court provides its opinion on a case where a defendant had been convicted by the trial court for drugs which had been purchased from him in an undercover operation, and for drugs which had been seized from his apartment. As the opinion explains, the police arranged a series of four undercover cocaine buys from the defendant. After completing the buys, the police got a search warrant for the defendant's apartment, where they seized a large amount of a substance that was, purportedly, cocaine. There was no problem or objection as to the search warrant that led to the seizure. With the undercover buys, after each one, the police used an on-site field test which gave a presumptive indication that the substance purchased was cocaine. No such field test was performed on the substance seized from the apartment.

At trial, the prosecutor's primary proof that the substance purchased and seized was, in fact, cocaine, was the ultimate drug analysis that was made at a lab after the arrest. At trial, the prosecutor introduced drug certificates that came from the drug analyses that had been performed. Unfortunately, the prosecutor made a serious error at the trial in that he did not introduce testimony of the analyst. This misstep was problematic (and found to be a reversible error) because the defendant was not given a chance to cross-examine the analyst about the analysis.

At trial, the court overruled the defendant's objection about that analyst issue, let the drug certificates into evidence, and found the defendant guilty as to both the purchased and seized substance. This appellate opinion covers the appellate court's review of the trial court's error. In the opinion, the appellate court throws out the certificates. Without the certificates in evidence, there was no evidence to show the seized substance was cocaine (the drug certificates), so the court had no choice but to reverse the defendant's conviction related to that seizure. The appellate court does find, however, that there was enough other evidence to sustain the conviction related to the purchases (and make the error "harmless"); primarily, that evidence was related to the on-site field tests.

The morale of the case for prosecutors is to not forget to have the analyst testify. The morale of the case for police is to always perform a proper field test; this is because the appellate court found that the secondary proof that the substance purchased was cocaine, i.e., the field test, was constitutionally sufficient to overcome the error concerning the analyst. In other words, if the police do this work, they can potentially save a case (and a conviction) that a prosecutor bumbles. The opinion indicates that such bumbles have happened with some frequency in the court's jurisdiction.

So, the whole opinion looks at whether the prosecutor's error was "harmless", in light of all the other evidence presented - in other words, whether there was enough to prove that "the substance" was cocaine, even without the drug certificates.

Here is the “other evidence” related to the on-site field test (which is classified as “circumstantial evidence”) that was established at trial with respect to the purchased substance:

- 1) Following each purchase, the police immediately conducted an on-site field test;
- 2) The police officer personally conducted the test;
- 3) The police officer verified the substance tested positive for cocaine via the field test;
- 4) The police officer was able to describe what the results looked like after breaking open a series of vials and applying the seized substance – and that the colors changed to reflect the presence of cocaine;
- 5) The police officer described the testing procedure;
- 6) The police officer had past experience conducting field tests; and,
- 7) The police officer had past experience seizing cocaine and eight years on the force, including the drug task force.

The appellate court noted that, in the process of dealing with the numerous instances of similar prosecutorial error, a more exacting and scrutinizing test has been established for the use of field tests to “save the day.” The elements of the test are: 1) the field tests must be properly conducted; and, 2) the testing must be supported by background foundational evidence, including a) evidence of the experience of the officer doing the test, b) evidence of the test’s methodology, and c) evidence of the definitive identification of the substance. Without the presence of both elements (and all subparts), the field tests will not make the prosecutorial error “harmless.”

The opinion cites a number of instances where the above “test” was not met, such as where the officer didn’t give testimony identifying the substance, didn’t base his testimony on his training and experience, or didn’t have training or experience.

The appellate court also noted that there is other circumstantial evidence which would be useful to make the prosecutorial error harmless, but that it is not necessarily required. This included such things as incriminatory admissions by the defendant and anything else that tends to demonstrate the drug-identity of the substance; however, nothing in the opinion indicates that such evidence alone would be sufficient. The appellate court noted that such evidence had also been introduced in the present case, but would not have been sufficient to overcome the prosecutorial error without the field test evidence as well.

The appellate court’s opinion concludes with its finding that the seized substance had neither the field test evidence, nor the other circumstantial evidence, which would have identified the seized substance as cocaine. But, that the purchased substance did. The appellate court explained that the foregoing is why the convictions on the purchased substance stood, and the conviction on the seized substance could not.