

ISSUE STATEMENTS
Start Arguing Your Case

Why My Case Is Different

- The facts are extreme
- A novel application of a settled rule of law
- New rule of law applied to standard facts
- Cutting edge legal issues
- Bad behavior by the government

Avoid the Generic

- Whether the showup was impermissibly suggestive in violation of art. 12?
- Whether police unreasonably extended the auto stop in violation of the Fourth Amendment and art. 14?
- Whether the evidence was sufficient for conviction?
- Whether the Defendant was prejudiced by admission of complaint evidence beyond that permitted by the first complaint doctrine?

Emphasize Essential Details

- What are the key facts to getting the court to rule in your favor?
- What are the key legal rules you need the court to apply to these facts?
- Can you fit both in your statement?

Details: Suppression

- Did police investigating an armed robbery impermissibly increase the suggestiveness already inherent in a post-incident showup when they draped the Defendant in a jacket found near him but which he was not wearing when apprehended so he would more closely resemble the description given by an eyewitness and then directed the witness to identify his robber by clothing?

Details: Suppression

- Does a police officer violate the Fourth Amendment and art. 14 when he or she observes a civil motor vehicle infraction but does not immediately pull the driver over and instead conducts most or all of the investigation justified by the violation before conducting the stop, and then uses the time that ordinarily would have been consumed by the legitimate law enforcement purposes of the stop to conduct an unrelated investigation?

Details: Sufficiency

- Was evidence the defendant was the same race as the robber, and that his fingerprint was on the note used in a bank robbery and was placed there 'recently,' without any other evidence identifying him as the robber or proving the fingerprint was placed on the note during commission of the crime, insufficient to support a conviction for armed robbery while masked?

Details: Sufficiency

- In the absence of expert testimony explaining how use of a hands-free, voice-activated Bluetooth phone system in the minutes leading up to a car accident could impair a driver's ability to see a pedestrian entering a street mid-block from between parked cars, was the Commonwealth's evidence insufficient to prove the Defendant's phone use caused the accident resulting in the pedestrian's death?

Details: Cumulative Error

- Did testimony from two designated first complaint witnesses, identification by four witnesses of the written statement prepared by the complaining witness describing the alleged rapes, and over a dozen repetitions of the fact the complaining witness reported the details of the alleged rapes to numerous witnesses, including two police officers and the nurse who performed a sexual assault examination, violate the first complaint doctrine and improperly bolster the complaining witness's credibility to the Defendant's prejudice?

Cumulative Error: Break It Up

- Did testimony from two designated first complaint witnesses, identification by four witnesses of the written statement prepared by the complaining witness describing the alleged rapes, and over a dozen repetitions of the fact the complaining witness reported the details of the alleged rapes to numerous witnesses, including two police officers and the nurse who performed a sexual assault examination, violate the first complaint doctrine and improperly bolster the complaining witness's credibility to the Defendant's prejudice?
- Did admission of voluminous evidence about the investigative response to the complaining witness's rape allegations, including testimony from the lead detective about his five interviews with her, meetings with the prosecution 'team' of forensic interviewer, prosecutor, and victim/witness advocate, collection of physical and first complaint evidence, and presentation of evidence to the grand jury considering charges against the Defendant place an imprimatur of official belief on the complaining witness's allegations and thereby improperly bolster her credibility to the Defendant's prejudice?

Cumulative Error: Quote the Prosecutor

- Did the prosecutor improperly align the jury with the Commonwealth and against the Defendant and pave the way for her multiple improper arguments in closing when she told the jury in her opening "the Commonwealth of Massachusetts is my client...you are the Commonwealth...you are my client?"
- Did the prosecutor argue for an inference of guilt she knew was false when she claimed the complaining witness 'had never heard' sexual terminology before and that such language 'was foreign to her' while withholding from discovery a police report showing the complaining witness had "detailed knowledge regarding sexual intercourse" years earlier?
- Did the prosecutor improperly bolster the complainant's credibility by telling the jury she "gained nothing" by testifying and should be believed because she was willing to tell strangers about "things that would make most grown people blush and be embarrassed to talk to strangers about?"
- Did the prosecutor improperly imply to the jury that the Commonwealth possessed additional evidence of the Defendant's guilt when she told them the first complaint doctrine prevented her from calling a "parade of witness after witness" to corroborate the complaining witness's testimony?
- In a case that depended entirely on the credibility of the complaining witness and her frequently implausible testimony, did the cumulative force of these myriad errors prejudice the Defendant and deprive him of a verdict based on the evidence introduced at trial?

Develop A Theme: Abstract to Specific

- Does a police officer violate the Fourth Amendment and art. 14 when he or she observes a civil motor vehicle infraction but does not immediately pull the driver over and instead conducts most or all of the investigation justified by the violation before conducting the stop, and then uses the time that ordinarily would have been consumed by the legitimate law enforcement purposes of the stop to conduct an unrelated investigation?
- Did a motion judge err when he concluded a state trooper had not unreasonably prolonged a routine traffic stop in violation of the Fourth Amendment and art. 14 by conducting his legitimate investigation before pulling the Defendant over and then performing objectively unreasonable investigations during the stop in the hope that grounds to search the Defendant's car would materialize?

Develop A Theme: Current Issues

- Did police investigating an armed robbery impermissibly increase the suggestiveness already inherent in a post-incident showup when they draped the Defendant in a jacket found near him but which he was not wearing when apprehended so he would more closely resemble the description given by an eyewitness and then directed the witness to identify his robber by clothing?
- Can an inherently suggestive pretrial identification procedure form the basis of an eyewitness's in-court identification of a criminal defendant under the rule of *Commonwealth v. Collins*, 470 Mass. 255 (2014)?
- Can an inherently suggestive procedure produce the 'unequivocal' pretrial identification that is a prerequisite to an eyewitness's in-court identification of a criminal defendant under the rule of *Commonwealth v. Collins*, 470 Mass. 255 (2014)?
- Was the Defendant prejudiced when the only eyewitness to the armed robbery for which he was on trial was permitted to make an in-court identification of him as the robber based on an 'unequivocal' pretrial identification made through an inherently suggestive showup at which police dressed him up to more closely resemble the eyewitness's description and then prompted the witness to identify him by clothing?

Final Thoughts

- Never mention a bad standard of review
- No names
- Don't feel bound by your section headings
- Break the rules
