

No. _____

In The

Supreme Court Of The United States

LAVAR EADY,
Petitioner,

v.

COMMONWEALTH OF MASSACHUSETTS
Respondent.

On Petition For Writ Of Certiorari
To The Appeals Court Of Massachusetts

APPENDIX

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September 6, 2019

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95 Mass.App.Ct. 1116

Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.
 NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See *Chace v. Curran*, 71 Mass. App. Ct. 258, 260 n.4 (2008).
 Appeals Court of Massachusetts.

COMMONWEALTH

v.

Lavar EADY.

18-P-907

|

Entered: May 31, 2019.

By the Court (Wolohojian, Kinder & Hand, JJ. ²)

MEMORANDUM AND ORDER
PURSUANT TO RULE 1:28

*1 The defendant raises three arguments in this direct appeal from his conviction, after a jury trial, of distributing a class B substance (fentanyl), as a subsequent offense, in violation of *G. L. c. 94C, § 32A (b)*. First, he asks us to conclude that the testimony of the substitute chemist in this case violated his right to confront witnesses under the Sixth Amendment to the United States Constitution, in effect asking us to overrule the Supreme Judicial Court's decision in *Commonwealth v. Grady*, 474 Mass. 715 (2016). Second, the defendant argues that the Commonwealth's evidence of distribution was insufficient because a reasonable jury could not find, beyond a reasonable doubt, that he had acted as the seller rather than the buyer of the drugs at issue. Third, he contends that a substantial risk of a miscarriage of justice occurs whenever a *Tuey-Rodriguez* charge is given, and that it did so here because the instruction was delivered prematurely.

See *Commonwealth v. Rodriguez*, 364 Mass. 87, 101-102 (1973). We affirm.

As to the defendant's first argument, although we respect defense counsel's zealous advocacy on behalf of his client in seeking to change the law, this court lacks the power to overrule the Supreme Judicial Court. See *Commonwealth v. Dube*, 59 Mass. App. Ct. 476, 485 (2003); *Commonwealth v. Healy*, 26 Mass. App. Ct. 990, 991 (1988). As a result, the defendant's first argument is controlled -- and defeated -- by *Commonwealth v. Grady*, 474 Mass. 715. The substitute chemist's testimony concerning the composition of the narcotic substance was permissible as her own opinion based on her review of data generated by a nontestifying analyst. *Id.* at 723-724. ¹ See *Commonwealth v. Greineder*, 464 Mass. 580, 584 (2013).

As to the defendant's second argument, we review the sufficiency of the evidence under the familiar framework of *Commonwealth v. Latimore*, 378 Mass. 671, 677-678 (1979), taking the evidence (and the reasonable inferences to be drawn from it) in the light most favorable to the Commonwealth, to determine whether there was enough evidence to permit a rational trier of fact to find beyond a reasonable doubt that the defendant distributed the drugs. *Commonwealth v. Johnson*, 481 Mass. 710, 728-729 (2019). Contrary to the defendant's assertion, the Commonwealth's evidence did not make it just as likely that the defendant was simply a user seeking to purchase drugs. See *Commonwealth v. Russell*, 46 Mass. App. Ct. 307, 311 (1999), citing *Commonwealth v. Latney*, 44 Mass. App. Ct. 423, 425-426 (1998). Police observed the defendant interact in two separate instances with individuals in a manner consistent with an exchange of drugs; the encounters were brief and appeared transactional; there were no indications that the encounters were social. As to the first encounter, the defendant briefly met with a couple and their arms went back and forth towards each other. The couple were then observed smoking a substance with a glass pipe. Within an hour, the defendant had a second encounter; this time, he met with a woman who appeared to have nothing in her hands beforehand, but afterwards had an item in her hand which she inspected before placing in her mouth. Again, the encounter was brief and did not appear social; the woman's and defendant's arms moved back and forth towards each other briefly. The woman then met a man, and the two went together to a nearby sheltered area. Police recovered from the man a small plastic bag containing fentanyl which he had placed in his mouth. When the defendant was immediately thereafter

apprehended, he had no drugs or drug paraphernalia, but did possess a cell phone and \$ 717. The defendant was sweating so heavily that his sweat formed a puddle on the ground where he was standing. See [Commonwealth v. Sinforoso](#), 434 Mass. 320, 328 (2001) (viewing evidence in light most favorable to Commonwealth, defendant's sweating may support consciousness of guilt).

*2 Finally, we are not persuaded by the defendant's argument that a substantial risk of a miscarriage of justice occurred from the timing of the Tuey-Rodriguez charge. This court reviews both the decision to give a Tuey-Rodriguez charge and its timing for an abuse of discretion. See [Commonwealth v. O'Brien](#), 65 Mass. App. Ct. 291, 295 (2005). Here, although the defendant asserts that the charge was prematurely given, the record does not support his claim. The case was submitted to the jury on the second day of this short trial. After deliberating approximately two and one-half hours, the jury asked a question about what would happen "since we can't agree." The judge dismissed the jurors for the day. The following day, the judge found that the jurors had not yet completed "due and thorough deliberation," [G. L. c. 234A, § 68C](#), and instructed them to continue their deliberations.

Several hours later, the jurors submitted a note stating that they remained unable to reach a unanimous decision and did not feel that more time would help "sway either party." The judge found that the jury had deliberated for six or seven hours by this time -- approximately as long as the testimony had taken. At this point, both the prosecutor and defense counsel told the judge that it would be appropriate to deliver the Tuey-Rodriguez instruction. We discern no abuse of discretion in these circumstances.

Nor are we persuaded by the defendant's argument that the charge is coercive in all instances, let alone that it was so here where the judge's "comments [we]re balanced and not slanted toward conviction." [Commonwealth v. Abdul-Alim](#), 91 Mass. App. Ct. 165, 173 (2017).

Judgment affirmed.

All Citations

95 Mass.App.Ct. 1116, 125 N.E.3d 802 (Table), 2019 WL 2321886

Footnotes

2 The panelists are listed in order of seniority.

1 The Commonwealth concedes, and we agree, that the substitute chemist's direct examination testimony with respect to the weight of the substance was erroneously elicited and admitted. However, it was not objected to and the defendant has not shown or argued any substantial risk of a miscarriage of justice resulting from its admission. We note that the weight of the substance was neither required to be proved nor otherwise at issue.

July 31, 2019

2019 WL 3713804 (Table)
Only the Westlaw citation is currently available.
(This disposition is referenced
in the North Eastern Reporter.)
Supreme Judicial Court of Massachusetts.

Reported below: [95 Mass. App. Ct. 1116 \(2019\)](#).

Opinion

***1** Appellate review denied.

COMMONWEALTH

v.

Lavar EADY

All Citations

Slip Copy, 2019 WL 3713804 (Table)

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COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS

Superior Court
Criminal Action
No. 2015-11024

* * * * *
COMMONWEALTH OF MASSACHUSETTS
v.
LAVAR EADY
* * * * *

JURY TRIAL
BEFORE: WILKINS, J.
JUNE 8, 2017

APPEARANCES:

ON BEHALF OF THE COMMONWEALTH:
Suffolk County District Attorney's Office
BY: KAUSHAL RANA, A.D.A.

ON BEHALF OF THE DEFENDANT:
BY: WILLIAM ROA, ESQ.

Boston, Massachusetts
Courtroom 806

Christine Doran Kerrigan
Official Court Reporter

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1 Oh, one last thing. Did you -- you can still bring them
2 down. Did you decide whether you want me to pick the foreperson
3 or whether you're content to have them pick their foreperson?
4 Again, you don't have to decide right now.

5 MR. ROA: Yeah, sure, I'll be able to give you a response.

6 THE COURT: Okay. Great. Okay.

7 (Court in recess.)

8
9
10
11 (Court in session.)

12 (Defendant is present with counsel.)

13 (Jury in.)

14 THE COURT: All right. Welcome back. Mr. Rana, your next
15 witness, please.

16 MR. RANA: Ms. Christine Tyson.

17 THE COURT: Good morning.

18 THE WITNESS: Good morning.

19 THE COURT: Mr. Rana.

20 CHRISTINE TYSON, sworn

21 **DIRECT EXAMINATION**

22 **BY MR. RANA:**

23 Q. Good morning, ma'am. Could you please state your name for
24 the record.

1 A. Christine Tyson, T-Y-S-O-N.

2 Q. And where do you work?

3 A. The Massachusetts State Police Crime Lab.

4 Q. How long have you worked there?

5 A. I have worked there since April of 2013.

6 Q. What are your job duties there?

7 A. I'm a forensic scientist three which is a supervisor within
8 the drug identification unit.

9 Q. Can you describe your educational background?

10 A. I have a bachelor of science degree in biochemistry from
11 Temple University.

12 Q. And what was your major -- I'm sorry. You said chemistry?

13 A. Biochemistry.

14 Q. Biochemistry. How many cases have you analyzed to date
15 ballpark?

16 A. I've analyzed thousands of cases.

17 Q. Now, prior to being in your supervisory role, what was your
18 previous position there?

19 A. I was a forensic scientist one from April of 2013 until
20 September of 2013. Prior to that I worked for the Philadelphia
21 Police Department as a forensic scientist in the drug
22 identification unit from 2007 until 2013.

23 Q. When you say a forensic scientist one, what were some of
24 the duties you had as a forensic scientist one?

1 A. You're training in the protocols of the crime laboratory.

2 Q. And now you said you were a forensic scientist three, is
3 that correct?

4 A. Yes, that's correct.

5 Q. And in that role, do you review your colleague's reports?

6 A. Yes, I do.

7 Q. How often do you review them?

8 A. I review them daily.

9 Q. Can you describe the process about how you review them?

10 A. Each report there's data generated. The data is in the
11 form of charts and graphs, and there's notes that are associated
12 with the evidence when they open it and analyze it. All of
13 those notes are reviewed, the data is reviewed to ensure that
14 the conclusions reached on the final report are supported by all
15 the data in the documentation in the case file.

16 Q. The state police lab that you work at, is it accredited?

17 A. Yes, it is.

18 Q. Can you describe, if you know, how the accreditation
19 process works how it gets accredited?

20 A. Sure. We have an external agency. It's a voluntary
21 accreditation process. The agency that we are accredited by is
22 ASCLAD, the American Society of Crime Laboratory Directors
23 Laboratory Accreditation Board. They are an independent agency
24 that comes out and checks our protocols and procedures and

1 everything, the management structure to the ISO17025
2 international standards. These are standards that need to be
3 met by testing facilities that want to be accredited. ASCLAD
4 lab also puts additional requirements on forensic laboratories.
5 At the end of the audit process, we receive the accreditation
6 documentation.

7 Q. How many times have you testified as a chemist expert in
8 drug cases?

9 A. Approximately 40 times.

10 Q. Do you know some of the courts that you've testified in?

11 A. In the Commonwealth of Massachusetts I've testified in
12 municipal and superior courts, and the municipal courts of
13 Philadelphia and the United States Federal Court.

14 Q. Now, can you explain in general how you and your lab
15 receives substances from police agencies to test?

16 A. Police agencies throughout the Commonwealth come to our
17 facility in Horse Pond Road in Sudbury. They bring their
18 evidence in a sealed condition. It's received by our evidence
19 technicians. At that point it receives a unique laboratory
20 identification number and a barcode. That's how we track it
21 throughout the facility. The evidence is then logged into our
22 evidence storage vault until it's asked for analysis.

23 Q. So until the substance is analyzed, it stays in a locked
24 vault?

1 A. That's correct.

2 Q. And how -- if you can how are assignments given to specific
3 chemists or analysts?

4 A. Assignments are handed out by the supervisors.

5 Q. Now when a substance comes in to be tested, you said that
6 it's given a unique lab number?

7 A. Yes, that's correct.

8 Q. I want to draw your attention to lab number 15-18291. Did
9 you do the initial testing on this substance or this item?

10 A. No, I did not.

11 Q. Who did?

12 A. Heather Moett(ph).

13 Q. And is she currently still at the lab?

14 A. No, she's not.

15 Q. Now, generally when a chemist leaves the state police, can
16 you describe kind of what happens to the items they've already
17 tested?

18 A. All of the evidence still has the reports associated with
19 it. The evidence after it's been tested is returned to the
20 submitting agency. So the evidence itself is with the agency
21 that had the evidence to begin with. We keep the reports and
22 the reports are all maintained in our facility. The evidence is
23 then -- I'm sorry. The reports are available for review by a
24 substitute chemist should testimony be required.

1 Q. So when a substitute chemist is assigned, can you describe
2 kind of what the substitute chemist generally does?

3 A. The substitute chemist performs a review of all of the
4 documents associated with the analysis, and at that point they
5 determine, based on the documents available, what the substance
6 contains.

7 Q. So what you are saying is that a substitute chemist looks
8 at the -- you said the notes and the documents and the data and
9 forms an independent opinion?

10 A. Yes, that's correct.

11 Q. Okay. Now, the equipment that's used during the testing of
12 these substances, can you kind of explain how it's determined
13 whether or not the equipment is functioning properly?

14 A. Sure. We have quality control procedures. Each of the
15 pieces of the equipment that we use is part of the quality
16 control program. Depending on the instrument or the balance
17 that's used depends on what types of quality procedures are
18 performed. They are performed weekly, monthly, or daily
19 depending on the instrument. It's all documented and recorded
20 within the laboratory.

21 Q. So the equipment is checked essentially on a regular basis?

22 A. Yes.

23 Q. Okay. Now, I want to draw your attention specifically to
24 lab number 1518291. Was there a substitute chemist that was

1 assigned for this matter?

2 A. Yes.

3 Q. And that's you?

4 A. That's correct.

5 Q. Do you know or when looking at when you were assigned this
6 matter do you know the name or names that were associated with
7 this lab number?

8 A. The suspects?

9 Q. Yes, or the individuals, yes.

10 A. I have it listed on the SP295. I couldn't state it off the
11 top of my head.

12 Q. Is your memory exhausted as to the names?

13 A. Yes.

14 MR. RANA: Your Honor, may she refer to her notes?

15 THE COURT: Yes.

16 A. Okay.

17 Q. And is your memory refreshed now?

18 A. Yes.

19 Q. And what were the names associated with this lab number?

20 A. We have three on here: Lavar Eady, Craig Smith, and Shannon
21 Barao, B-A-R-A-O.

22 Q. Thank you. How many item numbers or items were tested on
23 this lab number?

24 A. There was one.

1 Q. And what was the description provided, if you have it, of
2 what the item was?

3 A. It was a plastic bag of tan powder.

4 Q. Now, can you explain what the procedure is for analyzing a
5 powder?

6 A. Sure, all evidence is weighed prior to analysis beginning.
7 So the powder is weighed without the packaging to determine the
8 net weight of the powder. The evidence is then screened. In
9 the situation of a powder, we perform ultraviolet visible
10 spectroscopy test. This gives us a general idea of what should
11 be present in the powder, it gives us the guidance for the
12 further analysis that we would perform. Based on that test, we
13 would perform either a FTIR Fourier transform infrared
14 spectroscopy or a gas chromatography/mass spectrometry or a
15 GCMS.

16 Q. Now, with regards to the UV spectroscopy that you just
17 mentioned, were you able to review the data and the notes with
18 regards to that test for this powder?

19 A. Yes, I was.

20 Q. And what's your opinion as to what the data indicated?

21 A. That data indicates it's consistent with acetaminophen.

22 Q. And explain what acetaminophen is.

23 A. Acetaminophen is the active ingredient in Tylenol.

24 Q. Now, what is FTIR?

1 A. Fourier Transform infrared spectroscopy. It's an
2 instrument that uses infrared light to give a spectrum of the
3 compound of interest.

4 Q. And was that test done for this item or lab number?

5 A. No, it was not.

6 Q. And you mentioned GCMS.

7 A. Yes.

8 Q. Was that test done for this item number?

9 A. Yes, it was.

10 Q. And were you able to review the data that was generated as
11 a result of that test?

12 A. Yes.

13 Q. And what's your opinion with regards to that data regarding
14 this substance?

15 A. The substance in the test for GCMS contains fentanyl.

16 Q. You said fentanyl? I'm sorry.

17 A. Yes, fentanyl.

18 Q. And you said that the items are generally weighed. Was this
19 item weighed?

20 A. Yes.

21 Q. What was the weight of the tested powder?

22 A. Zero point zero nine grams.

23 MR. RANA: May I approach, Your Honor?

24 THE COURT: Yes.

1 Q. Ms. Tyson, I'm going to hand you a plastic bag. I want you
2 to take a look at this, and see if you recognize any numbers,
3 markings, or anything like that?

4 A. Sure.

5 Q. So what do you recognize?

6 A. So this is very consistent with the packaging that leaves
7 our laboratory. This is the evidence sticker that's put on with
8 the barcode that is how the evidence is tracked throughout the
9 laboratory. The laboratory number is also inside here. That
10 sticker is placed by the submitted agency when they submit the
11 evidence. Additionally, the original analyst, Heather, her
12 initials and the date that she analyzed the evidence along with
13 the laboratory number is inside the packaging on the item
14 analyzed itself and inside of the seal.

15 Q. Is there -- you mentioned there was a lab number assigned
16 to this particular case, is that lab number on that package
17 there?

18 A. Yes, it's the lab number is here - 1518291. It's also
19 inside of here on this barcode sticker. It's handwritten by the
20 analyst on this side of the evidence and on this side of the
21 evidence. It's also handwritten on the packet itself which is
22 how evidence is repackaged after we test it.

23 Q. Thank you.

24 MR. RANA: Your Honor, I would like to have what has been

1 marked for identification as Exhibit A be marked as an exhibit.

2 MR. ROA: No objection.

3 Q. I'll ask you one more question --

4 THE COURT: What's the number on that one?

5 THE COURT REPORTER: Exhibit 13.

6 THE COURT: Thank you.

7 (Whereupon Exhibit No. 13, Plastic Bag Containing Drugs

8 (formerly A for identification) was marked as an exhibit.)

9 Q. Exhibit 13, I'm just going to hand it to you again real
10 quick. If you noticed in this this exhibit there is what has
11 been marked it says one plastic bag tan powder heroin. Was that
12 generated by the police agency or by the lab?

13 A. This sticker is by the police agency.

14 Q. Okay. So where it says tan plastic bag of heroin, that was
15 not generated by the lab, that was generated by the police
16 agency, is that right?

17 A. Correct. This bag is what's submitted by the lab. We put
18 it in this exterior one.

19 Q. And, Ms. Tyson, when you receive items from police
20 agencies, they kind of -- well, is it common what they may have
21 written initially on a bag it turns out testing makes it a
22 different substance?

23 A. Yes.

24 Q. So they don't -- you're the one that does the testing, is

1 that right?

2 A. Yes, that's correct.

3 MR. RANA: May I have one moment, Your Honor?

4 THE COURT: Okay.

5 MR. RANA: Your Honor, I would just ask also that what's
6 been marked premarked as an exhibit, Exhibit B for
7 identification I ask that this also be marked as an exhibit now.

8 THE COURT: Any objection?

9 MR. ROA: What is B, just the bag? No objection.

10 THE COURT: All right. So Exhibit B will be in evidence
11 now.

12 MR. RANA: I have nothing further, Your Honor.

13 THE COURT: Okay. Cross-examination.

14 MR. ROA: Yes.

15 (Whereupon Exhibit No. 14, Brown Envelope (formerly B for
16 identification) was marked as an exhibit.)

17 **CROSS-EXAMINATION**

18 **BY MR. ROA:**

19 Q. Good morning, Ms. Tyson.

20 A. Good morning.

21 Q. You indicated that you have a bachelor's degree?

22 A. Yes, that's correct.

23 Q. You do not have a master's degree, correct?

24 A. Correct.

1 Q. You do not have a PhD?

2 A. Correct.

3 Q. You are not in the process of obtaining those things?

4 A. No, I am not.

5 Q. In college, you did not take any courses in fentanyl?

6 A. No.

7 Q. You did not take any courses in how to work any of this
8 machinery that you were discussing with Attorney Rana?

9 A. I did have an instrumentation course which goes over all
10 the instrumentation that we use on a daily basis.

11 Q. It's fair to say that other than for a brief period of time
12 you've always worked for the government in one capacity or
13 another?

14 A. Yes.

15 Q. It's fair to say that you've never testified for the
16 defense in a criminal case?

17 A. I've not had the opportunity, no.

18 Q. You indicated that -- strike that. You were just shown an
19 evidence bag?

20 A. Yes.

21 Q. That's the first time you've seen that bag, correct?

22 A. To my knowledge, yes.

23 Q. So, again, prior to today you had not seen that bag?

24 A. Not that I can remember, no.

1 Q. You personally did not test the contents of that bag?

2 A. That's correct.

3 Q. Your colleague did or former colleague?

4 A. Yes, that's correct.

5 Q. Attorney Rana showed you I believe exhibit -- the
6 certificate of analysis that you were referring to earlier?

7 A. He did not show me the certificate.

8 MR. ROA: May I approach?

9 THE COURT: Yes.

10 Q. Ms. Tyson, do you know when that bag that you were
11 referring to when it first into the lab?

12 A. I refer to the notes?

13 Q. Is your memory exhausted?

14 A. Yes.

15 Q. Yes.

16 A. It was received on 7/28/2015.

17 Q. And you described the procedure that was followed within
18 the lab?

19 A. Yes.

20 Q. So once it's received by your drug lab, it goes into a
21 vault?

22 A. Yes.

23 Q. That's a locked vault?

24 A. Yes, that's correct.

1 Q. And who has access to that vault?

2 A. The laboratory director, the deputy director of forensic
3 chemistry, the manager of forensic chemistry, all of the drug
4 chemists, and the evidence personnel.

5 Q. So all the drug chemists have a key or the combination to
6 get into that vault?

7 A. Yeah, it's a card access. Our badges allow us in.

8 Q. I see. And I take it in that vault there's a numbers of
9 items of evidence from various cases?

10 A. Yes, that's correct.

11 Q. Isn't it true that whenever someone's obtaining a piece of
12 evidence that he or she would have to sign out for that that
13 piece of evidence out?

14 A. Yes, that's the scanning through the electronic system.

15 Q. I see. And do you know if anyone has to go in with the
16 chemist to verify that, or the chemist can go in on their own?

17 A. There are two people required to open the vault door.

18 Q. But you don't know if that procedure was followed in this
19 case?

20 A. In order to obtain the evidence, two people must open the
21 door so it has to be followed in order to get the evidence out
22 of the vault.

23 Q. I guess my question, you personally did -- you have no
24 knowledge of that actually happening, though?

1 A. No, I didn't personally observe it happening.

2 Q. And you personally haven't seen any documentation that
3 would verify that two people actually went into the vault to
4 obtain that piece of evidence that you were looking at?

5 A. Correct.

6 Q. Do you know when this -- strike that. This -- the item of
7 evidence that you were looking at earlier, that was tested on
8 August I believe 11th of 2015?

9 A. I believe that's when the certificate was authored.

10 Q. Do you know when the substance was tested then?

11 A. If I may refer to the notes.

12 Q. Is your memory exhausted?

13 A. Yes.

14 Q. Yes.

15 A. August 10, 2015 was when it was tested.

16 Q. And, again, by the same procedure you're describing either
17 that day or the day before the previous chemist would have had
18 to have gone into the vault, correct?

19 A. Yes.

20 Q. And after this analysis is done, is that some procedure
21 followed, two people have to bring it into the vault?

22 A. So the evidence is placed in a pending review bin. That
23 bin is then taken by our evidence technicians and placed into
24 the vault pending review of the case.

1 Q. Pending review by a supervisor?

2 A. A supervisor, yes.

3 Q. And when you say bin, describe that.

4 A. It is a locked bin on both sides with a slot where the
5 evidence goes into, and the evidence personnel has keys to
6 unlock the bin to get the evidence out of it, and then it's
7 placed in the vault until the evidence is reviewed and once --
8 I'm sorry -- the data is reviewed. Once the data is reviewed,
9 the evidence then goes to a different vault where it's ready for
10 return to the submitting agency.

11 Q. And, again, just to confirm, you personally have not
12 actually tested the substance that was in the bag that you were
13 looking at earlier?

14 A. That's correct.

15 MR. ROA: I have no further questions.

16 THE COURT: Redirect?

17 MR. RANA: Nothing further.

18 THE COURT: Thank you. You're excused. You may step down.

19 MR. RANA: Sidebar, Your Honor.

20 THE COURT: Okay.

21 (Sidebar commences:

22 MR. RANA: Your Honor, Officer England is not able to be
23 here. He apparently executed a search warrant last night so
24 he's in West Roxbury Court. I apologize to the Court. I told