Legal Update

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The Appeals Court holds that swallowing drugs is a violation of the G. L. c. 268, § 13B and qualifies as misleading a police officer!

Commonwealth v. Josefa Tejeda, Mass. Appeals Court, No. 15-P-1085 (2016):

Facts: On October 8, 2014, Boston Police were on patrol in area known for open drug dealing. Officer David Crabbe observed a male identified as Christopher Willet walking with the defendant, Josefa Tejada, towards Shawmut Avenue. Officer Crabbe lost sight of both individuals, and found them later behind a parked car near Madison Park Court. Willet and Tejada made eye contact with Officer Crabbe and then began to walk away. At this point, Officer Crabbe saw Jim Figueroa, a known heroin user squatting behind a car. Figueroa appeared to be concealing something in his right hand. When Figueroa refused to show his hands, Officer Crabbe grabbed his right arm and a small plastic bag of a light brown powdery substance fell to the ground. Figueroa was arrested and at that point, Tejeda picked up the plastic and swallowed it.

Tejeda was charged with possession of heroin, G. L. c. 94C, § 34, and misleading a police officer, G. L. c. 268, § 13B. Tejeda filed a motion arguing the police lacked probable cause for both charges.

The motion judge allowed the motion related to the charge of misleading a police and found that it requires an act of deception and that the ingestion of the substance was not misleading conduct.

Conclusion: The Appeals Court held that there was probable cause that the defendant concealed and destroyed evidence with intent to interfere with a criminal investigation and that such conduct was misleading a police officer pursuant to G.L. c. 268, § 13B (1) (c), and it vacated the order dismissing the charge.

G.L. c. 268, § 13B (1) (c) provides that whoever, directly or indirectly:

(1) Willfully misleads;
(2) A police officer;
(3) With intent to impede, obstruct, delay, harm, punish or otherwise interfere with a criminal investigation, shall be punished.

In ***Commonwealth v. Figueroa***, 464 Mass. 365 (2013), the SJC adopted the definition of misleading conduct from the Federal witness tampering statute, 18 U.S.C. § 1512. The significant portion from that statute includes that knowingly, using a trick, scheme or device with intent to mislead falls within the parameters of the witness tampering statute.

Based on the facts in this case, Tejeda's affirmative act of picking up and swallowing the suspected heroin was a trick. The Appeals Court found that Tejeda's mischievous act was designed to outwit the police by preventing them from seizing evidence and proving its chemical composition. "It is reasonable to infer that swallowing the suspected heroin was an affirmative act committed for the purpose of interfering with and impeding a criminal investigation."

The Appeals Court further stated that its interpretation of misleading conduct was consistent with the 2006 legislative amendment which expanded the scope of § 13B. Misleading conduct was criminalized and police officers were added to the list of victims under the expanded statute.