

Lawyers Weekly

Conviction numbers in Worcester trail state: 66% acquittal rate in Superior Court trials

by David E. Frank

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BOSTON, MA -- When the jury foreman announced on Dec. 10 that Michael Fox was not guilty of rape, Fox joined a long list of criminal defendants to prevail in Worcester Superior Court in 2009.

The 32-year-old Worcester man, who faced possible life behind bars had he been convicted of sexually assaulting a female acquaintance, became the 31st and final defendant of the year to best prosecutors from District Attorney Joseph D. Early Jr.'s Superior Court trial team.

"Michael was innocent, and they knew it," said Fox's mother, Betty. "I'm not shocked at all to hear there were so many other people found [not guilty], because everyone who watched my son's case knew they had nothing on him."

In fact, an analysis of the statewide Superior Court conviction rate in 2009 reveals that nearly two-thirds of the criminal defendants in Worcester County were acquitted of felony charges at trial. That stat is nearly 30 percentage points below the commonwealth's overall trial conviction rate and 20 points lower than the county with the second worst results, Bristol County.

In response to a public records request, Jury Commissioner Pamela J. Wood provided Lawyers Weekly with a list of nearly 700 Superior Court defendants who went to trial last year in Massachusetts. Each case was then run through the state's Trial Court Information Center database to determine whether the defendant was convicted or acquitted.

A trial that resulted in a jury returning a guilty verdict on at least one felony indictment was considered a conviction. A case that yielded a guilty finding only on a misdemeanor offense was treated as an acquittal.

In an interview, Early - who faces a 2010 re-election bid along with all the other DAs in Massachusetts - took issue with Lawyers Weekly's method of analyzing the data.

"Numbers can be misleading," he said. "And to suggest that [34] percent means we aren't doing our job or that things aren't being done the way they should be done here is unfair and completely wrong. If there was a problem last year, I think it was an aberration, or maybe we just had tougher cases. I have no regrets about the performance of my prosecutors."

But Judge Robert A. Barton, who presided over more than 250 jury trials before retiring from the Superior Court in 2000, called the Worcester results "dismal" and said he could not recall any county in his 22 years on the bench with a rate lower than 50 percent.

"In baseball, you get into the Hall of Fame with a .333 average," Barton said. "The only place a district attorney goes with those kinds of numbers is the Hall of Shame."

Victims of their own success?

Many of Worcester's not-guilty verdicts in 2009 involved defendants like Fox who were accused of rape or indecent assault and battery.

Of the 19 individuals tried in Worcester Superior Court for sexual assault, only five received felony convictions, a number far below the state's overall rape and indecent-assault-and-battery conviction rate of 54 percent.

Thomas F. Reilly, a former attorney general and Middlesex County district attorney who now practices in Boston, said he doubted anyone would consider Worcester's conviction rate acceptable.

"I know if that was my county, I would want to ask questions," Reilly said. "It would certainly cause me concern all the way through the process, from the arrest through the trial."

Early, a criminal defense lawyer in Worcester for nearly two decades before succeeding longtime DA John J. Conte in 2007, criticized Lawyers Weekly's analysis for failing to consider misdemeanor guilty verdicts as convictions.

"If we have a case where someone is indicted and charged with indecent assault and battery, which is a felony, and the jury comes back with a conviction on assault and battery, which happened last year, under your methodology that doesn't count as a conviction," he argued. "To say to one of our prosecutors that they lost because they didn't get the indecent assault and battery - only the assault and battery - is an insult to them. You'd have victims that are in strong disagreement with that, too."

Early also questioned the analysis for failing to consider cases in which defendants pleaded guilty prior to trial. In 2009, the DA said, his office disposed of 595 cases in Superior Court for an overall conviction rate of 83 percent. That number is consistent with the rest of the state, he added.

Early called the 2009 trial stats an anomaly from previous years when his lawyers secured Superior Court guilty verdicts at trial more than 60 percent of the time. Already in 2010, he said, prosecutors have obtained convictions in seven of 11 trials.

"Based on your formula, some numbers went down last year, but if you put in 2007, 2008, 2009 and 2010, overall we've been pretty consistent, and we've been getting better with regard to trying aggressive cases," he said. "Looking at our rates from the past, I could say that we're victims of our own success."

When informed that each of the other DAs' offices in Massachusetts performed much better than Worcester last year using the same formula, Early replied: "That doesn't make your study right."

The DA, who does not yet have a challenger this fall, added that his office has been more aggressive than Conte's in bringing certain sexual assault, perjury and shooting cases to court.

"We are trying to show people that they can't avoid the grand jury or lie in front of the grand jury," Early said. "Even if there is a very good chance we are going to lose the case, we're still going to bring those cases to trial."

Conte could not be reached for comment prior to deadline.

'It's a mess'

Berkshire County District Attorney David F. Capeless, whose office boasted the state's highest conviction rate at 85 percent, said not-guilty verdicts go with the territory.

"If an office had a 100 percent conviction rate, I'd probably say they'd be doing something wrong in terms of what they're bringing out of the grand jury," he said.

When asked how he would react if the numbers from his office had been as low as those in Worcester County, Capeless declined to comment.

But one Worcester criminal defense lawyer, who asked not to be identified, said he was not surprised by the results.

"It's a mess over there," he said. "I don't think [Early is] screening cases like his predecessor did, and it's resulting in not-guiltys."

Another veteran lawyer, who also did not wish to be named, said some prosecutors in Worcester are indicting street-level gang cases without calling crime victims and other critical witnesses to the grand jury.

When the cases go to trial months, if not years, later, the lawyer said, the witnesses cannot be impeached with prior sworn testimony and do not cooperate in front of the jury.

"There is a reason they indict cases that way in Middlesex and Suffolk, because if you don't, there's no way you're going to get a conviction," the attorney said.

Christopher P. LoConto, who estimated that he tried between seven and 10 Superior Court trials in Worcester last year, agreed that Early has indicted cases that Conte would have rejected.

"Under the last administration, they'd either give away the bad cases by pleading them out in District Court or dumping them in the grand jury," the Worcester practitioner said. "There certainly seem to be a lot more difficult cases in Superior Court."

Brian E. Murphy, a former CPCS lawyer now in private practice in Boston, tried three rape cases in Worcester Superior Court last year. He said Early's office clearly implemented a policy on sexual assault cases that impacted the conviction rate.

"There is no question that they are willing to throw a sexual assault case in front of a jury when they are not sure what happened and just let the jury try to sort it all out," he said.

According to criminal defense attorney David L. Cataldo of Worcester, Early has also taken a tougher stance on plea negotiations.

"Other DAs are sometimes willing to plea bargain if they have a bad case, but it's been hard to do it with [Early]," he said. "There seems to be an attitude over there that they are OK trying a case with holes in it - and losing."

'Baffling'

Keith S. Halpern of Wellesley, who secured a rare not-guilty-by-reason-of-insanity verdict in a first-degree murder case in Superior Court last March, said the matter never should have gone to trial in the first place.

"The only reason a case that the government simply could not prove went to trial was because the assistant district attorney responsible for the case wasn't given the authority to make decisions," he said.

On the eve of trial, Halpern said, Early pulled the plug on a deal he had worked out with trial prosecutor Eduardo O. Velazquez.

Halpern's client, Lee Chiero, was accused of stabbing his 59-year-old mother to death in their Uxbridge home in 2007. Though three mental health experts, including one retained by the prosecution, agreed that Chiero lacked criminal responsibility and was unable to determine right from wrong, Early rejected the agreed-upon disposition and ordered Velazquez to try the case, Halpern said.

"Velazquez had in fact drafted an order for the judge to sign indicating that the commonwealth agreed Chiero was insane and should be civilly committed to Bridgewater," Halpern said. "Velazquez was the most familiar person in that office with the facts of the case and wanted to reduce the charge to second-degree murder with a stipulation that the defendant be declared insane. But the bottom line is that Early changed his mind."

At trial, Velazquez presented no medical evidence to dispute the insanity finding, Halpern said. After less than six hours of deliberations, a jury returned a not-guilty verdict.

"I've never seen a Superior Court case where a senior trial prosecutor didn't have that kind of authority," Halpern commented. "It was baffling."