COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

NO. 2021-P-0579

COMMONWEALTH OF MASSACHUSETTS,
Appellant

v.

CHRISTIAN EDWARDS,
Defendant-Appellee

BRIEF FOR THE COMMONWEALTH ON APPEAL FROM AN ORDER DISMISSING THE COMPLAINT WITH PREJUDICE AND THE DENIAL OF A MOTION TO RECONSIDER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

Rules

STATEMENT OF THE ISSUES

I. Whether the trial judge erred and abused his discretion in dismissing the complaint with prejudice after the jury was sworn as a discovery sanction where there was no government misconduct, lesser sanctions were available, and the defendant was not prejudiced.

II. Whether the prohibition against double jeopardy does not bar a retrial in this case where jeopardy did not terminate in an acquittal.

STATEMENT OF THE CASE

On March 26, 2019, a complaint issued in the Springfield Division of the District Court Department charging the defendant, Christian Edwards, with one count of violating an abuse prevention order in violation of G. L. c. 209A, § 7 (No.1923-CR-001870;R.A.7).[1] On January 8, 2020, the parties filed a trial readiness conference report and had a trial readiness conference before the pretrial judge, Ouimet-Rooke, J. (R.A.4). Beginning on February 25, 2020, the defendant had a jury trial before the trial judge, Sabbs, J. (R.A.4-5). On February 26, 2020, after the jury was sworn, the defendant objected to the admission of the certificate of service of the abuse prevention order on the grounds that the Commonwealth

[1] References to the record on appeal are made as follows: the record appendix is cited as R.A.[page] and the transcripts are cited as Tr.[date: month-day]/[page]. The transcripts contain several obvious inaccuracies where statements are misattributed but from context and content the identity of the speaker is apparent.

had failed to turn over the certificate prior to trial (Tr.2-26/13). After hearing the arguments of the parties, the trial judge found that the Commonwealth had not turned over the correct certificate of service and dismissed the complaint with prejudice as a discovery sanction on his own motion (Tr.2-26/22). Later that same day, the Commonwealth filed a motion to reconsider the order of dismissal with prejudice (R.A.15). On March 2, 2020, the defendant filed an opposition to the Commonwealth's motion to reconsider (R.A.20). After a hearing the same day, the trial judge denied the Commonwealth's motion to reconsider (R.A.15;Tr.3-2/13).

On March 9, 2020, the Commonwealth filed a timely notice of appeal from the order of dismissal and the denial of its motion to reconsider (R.A.30). See Mass. R. A. P. 3(a)(1), as appearing in 481 Mass. 1603 (2019); Mass. R. A. P. 4(b)(1), as appearing in 481 Mass. 1606 (2019). On June 25, 2021, the Massachusetts Appeals Court docketed the Commonwealth's appeal (No.2021-P-0579). This case is before this Court pursuant to G. L. c. 278, § 28E. See Commonwealth v. Brusgulis, 398 Mass. 325, 326 (1986) (the Commonwealth may appeal an order of dismissal after the jury is sworn under G. L. c. 278, § 28E, as "[t]he availability of appellate review under the first clause [of § 28E] is not limited to pretrial dismissals").

STATEMENT OF THE FACTS

In the police report attached to the complaint, the Commonwealth alleged that a judge issued an abuse prevention order on June 11, 2018, against the defendant (R.A.8). The order prohibited the defendant from having any contact with the complaining witness, Tiffany,[2] and ordered him to stay fifty yards away from her, her house, and her place of work (R.A.8). The Chicopee Police Department served the abuse prevention order on the defendant on August 8, 2018 (R.A.8). The complaint further alleged that on February 22, 2019, Tiffany's brother, Michael, observed the defendant drive by the home Tiffany and Michael shared moments before Tiffany arrived there that evening (R.A.8). Tiffany left home shortly thereafter to stay with a friend for the night (R.A.8). Michael saw the defendant drive by the home multiple times that evening after Tiffany left (R.A.8).

At the trial readiness conference on January 8, 2020, both parties reported to the pretrial judge that they were ready for trial and filed a trial readiness conference report (R.A.13;Tr.1-8/2). The prosecutor stated that the Commonwealth would be offering the abuse prevention order as its only exhibit (Tr.1-8/3). The pretrial judge asked defense counsel if he had been provided with the order, and he responded that he had received it (Tr.1-8/3-4). The pretrial judge asked, "Is there any problem

[2] The Commonwealth refers to the complainant by first name and omits any information further identifying her in its brief.

with service?" (Tr.1-8/4). Defense counsel responded, "I've been provided discovery." (Tr.1-8/4).[3] The case was continued to another date for trial (Tr.1-8/6).

On February 25, 2020, the parties reported for jury selection (Tr.2-25/1). The prosecutor informed the trial judge that the Commonwealth had an amended witness list, and she did not plan on calling any police officers as witnesses (Tr.2-25/7). The jury was selected and sworn, and the matter was continued to the next day for opening statements (Tr.2-25/60, 69-70).

After the opening statements, the prosecutor called Tiffany to testify (Tr.2-26/6-7). When the prosecutor was preparing to introduce the abuse prevention order with the attached certificate of service, the parties approached sidebar and defense counsel informed the trial judge that he had never seen the document the prosecutor was preparing to introduce (Tr.2-26/13). He explained that at the pretrial conference, the trial prosecutor had asked him if she had given him the abuse prevention order affidavit (Tr.2-26/14).[4] He said he handed back to her what

[3] On the trial readiness conference report, defense counsel left blank the section asking whether the defendant would object to the Commonwealth's proposed exhibits (R.A.13).

[4] A different prosecutor, who was covering for the trial prosecutor, had represented the Commonwealth at the pretrial hearing on January 8, 2020, so it is unclear whether defense counsel was mistaken about the identity of the prosecutor, the date, or the case (Tr.1-8/1).

she had provided him in discovery, she had compared it to her file, and she confirmed that he had been provided the proper discovery (Tr.2-26/14).

In recounting the trial readiness conference, defense counsel explained, "And then when we were litigating the trial-readiness conference, Judge Ouimet-Rooke said to me, 'Is there any issue with service?' And I said, 'I've received the discovery from the Commonwealth.' And she said okay. And that was the end of the discussion." (Tr.2-26/14). He stated that the service date in the material he received in discovery was April 22, 2019, after the alleged date of offense of February 22, 2019 (Tr.2-26/15). Defense counsel said it would have been unethical for him to tell the Court and the Commonwealth that there was a significant flaw in the case against his client (Tr.2-26/15-16).

The trial judge suggested that he could have filed a motion to dismiss (Tr.2-26/16). Defense counsel responded, "And then they could have re-complained it and my client would be back in the position he finds himself in today. That's why I wanted to impanel the jury, so that he could be found not guilty of this offense." (Tr.2-26/16). He further noted that the police report had the correct date of service, prior to the offense, and a motion to dismiss would have failed (Tr.2-26/16).

The prosecutor responded that the police report gave the correct date of service, so the defendant was on notice of the correct date (Tr.2-26/17). She noted that the defendant did not raise the issue at the pretrial hearing and the fact that the

defendant had notice of the proper service date should be sufficient (Tr.2-26/17-18). She argued that excluding the certificate of service would be improper (Tr.2-26/17-18). The prosecutor stated that she believed that the defendant had been provided with the same document she had in her file, but she was not the prosecutor on the case when discovery was provided so she could not confirm that to the judge (Tr.2-26/19). Defense counsel said that the documents he had were what he received from the Commonwealth and that he did not tamper with the discovery in order to claim a discovery violation (Tr.2-26/19-20).[5]

After a short recess, the trial judge returned and made findings for the record (Tr.2-26/20). He said that he considered "all of the options here." (Tr.2-26/20). He stated, "[T]he defense was provided with discovery that included service being on April 22nd of 2019, with the crime alleged to have occurred two months prior to that service. And that was, I think, provided by the Commonwealth sometime in the past." (Tr.2-26/20). He continued, "[A]t trial the Commonwealth had a certified copy of the restraining order that included multiple services, at least one that would have been prior to the date of offense." (Tr.2-26/20). He noted that the police report -- which he had not seen -- had the correct service date of August 8, 2018

[5] The transcript improperly attributes this statement to the trial judge.

(Tr.2-26/20-21). He did not fault the defendant for failing to obtain his own certified copy of the restraining order from the clerk's office (Tr.2-26/21).

He concluded,

> Considering all of the options, including declaring a mistrial, I think declaring a mistrial would be fundamentally unfair to the defendant. It would allow the Commonwealth to get another trial date absent some appellate issue or anything like that, to get a new trial date and cure this problem.
>
> The Commonwealth is really bound by their trial readiness and bound by their, I guess, either stating in court or certifying that all the discovery was complete. It was, now, apparently incomplete, and incomplete as to a fundamental theory of proof for the Commonwealth. . . .
>
> I'm not going to declare a mistrial on this. However, I think it would be unfair to the defendant to go forward and allow the Commonwealth to cure it. If I just indicate that they do not offer the certified copy, then they might go get the [police officer] to testify [to service]. And all of that, again, I think would be fundamentally unfair.
>
> So as a result, the sanction would be that the matter will be dismissed with prejudice. I don't see any other resolution short of that, that would be fair to the defendant.

(Tr.2-26/22).

At the hearing on the Commonwealth's motion to reconsider, the prosecutor argued that the purpose of the modern discovery rules was to prevent the admission of "surprise evidence and the prejudice often associated with that." (Tr.3-2/3). She noted that it was clear that defense counsel was not at all surprised by the evidence because he was aware of the discovery problem and purposefully did not raise the issue prior to trial (Tr.3-2/3). She stated, "If this was an issue that would actually

have been valid, [the trial readiness conference] would have been an opportunity for defense to have raised that issue." (Tr.3-2/4).

Defense counsel repeated his argument that he was not obligated, "no matter what's on the trial-readiness conference report, to alert the Court, or certainly the Commonwealth, to misconduct or errors or oversights on the part of the Commonwealth that are to the defendant's advantage." (Tr.3-2/5). The trial judge interjected, "I'm not so sure I would agree to misconduct in that sense." (Tr.3-2/5). Defense counsel acknowledged that the trial judge may not be comfortable calling it misconduct (Tr.3-2/6). He then reiterated that raising the discovery issue at trial was a tactical choice (Tr.3-2/6-7). He stated that the rules of criminal procedure permit any sort of sanction the judge deemed appropriate and that there was no reason for the judge to reconsider the order of dismissal (Tr.3-2/7).

The prosecutor argued that there was simply no incurable prejudice to the defendant warranting dismissal of the complaint with prejudice (Tr.3-2/9). The trial judge agreed that prejudice was the issue and said,

> So if I'm -- and again, there might have been some waiting in the weeds here to strike, from the defense, but that's their right. So, but if their preparation was based upon the fact that they were not given notice of service of the defendant that occurred prior to the alleged date of offense, and so the point being that they show up at trial without that, I don't think -- I think he's on notice for what a police officer might have testified to because it's in a police report. I'll note the Commonwealth decided not to call the [police] witnesses prior to any of this happening.

(Tr.3-2/9-10). The prosecutor responded that the defendant was on notice of the proper service date in the police report (Tr.3-2/10). The trial judge said that he was talking about the certificate of service (Tr.3-2/10).

The prosecutor argued,

> I think, your Honor, it's a disservice and goes in the face of the discovery rules to say that something that is not fully complete but is a mistake or something that could have been righted should then be held upon to the point where we're in trial, we have a jury, and then defense raises it as a reason to end the case.

(Tr.3-2/11).[6] The trial judge noted that defense counsel had not expressly asked for a dismissal but that he, as the judge, had determined that there was no fair way to cure the discovery problem (Tr.3-2/11-12). He ruled, "I'm not going to fault the defendant, even if there was some laying in the weeds there. They do have obligations to their client. So the request, the motion to reconsider is denied. The matter will remain dismissed with prejudice." (Tr.3-2/13).

[6] The transcript improperly attributes this statement to defense counsel.

ARGUMENT

I. The trial judge erred and abused his discretion in dismissing the complaint with prejudice after the jury was sworn as a discovery sanction where there was no government misconduct, lesser sanctions were available, and the defendant was not prejudiced.

The trial judge erred and abused his discretion in dismissing the complaint with prejudice as a discovery sanction. "Rule 14(c)(1) of the Massachusetts Rules of Criminal Procedure, as appearing in 442 Mass. 1518 (2004), provides: 'For failure to comply with any discovery order issued or imposed pursuant to this rule, the court may make a further order for discovery, grant a continuance, or enter such other order as it deems just under the circumstances.'" Commonwealth v. Carney, 458 Mass. 418, 419 n.3 (2010). Sanctions "are limited to remedial measures aimed at curing prejudice and ensuring a fair trial[.]" Id. at 419.[7] The Court reviews "the judge's sanctions order for abuse of discretion or other error of law. On review of the record, [the Court] follow[s] the well-established principle that subsidiary findings of fact made by the judge below will be accepted by the court absent clear error." Id. at 425, citing Commonwealth v. Aarhus, 387 Mass. 735, 742 (1982). A judge's discretionary decision constitutes an abuse of discretion where the reviewing court concludes the judge made a clear error of judgment in

[7] "Sanctions pursuant to Mass. R.Crim. P. 14(c) . . . pertain to the failure to comply with a discovery order or with the procedures for mandatory discovery." Commonwealth v. Frith, 458 Mass. 434, 442 n.9 (2010).

weighing the factors relevant to the decision such that the decision falls outside the range of reasonable alternatives. L.L. v. Commonwealth, 470 Mass. 169, 185 n.27 (2014). The trial judge both abused his discretion and committed an error of law.

"Dismissal of criminal charges with prejudice is the most severe sanction that the court can impose in a criminal case to remedy misconduct on the part of the Commonwealth." Commonwealth v. Mason, 453 Mass. 873, 877 (2009), citing Commonwealth v. Viverito, 422 Mass. 228, 230 (1996). "The dismissal of a criminal case is a remedy of last resort because it precludes a public trial and terminates criminal proceedings." Commonwealth v. Cronk, 396 Mass. 194, 198 (1985). "Absent egregious misconduct or at least a serious threat of prejudice, the remedy of dismissal infringes too severely on the public interest in bringing guilty persons to justice." Commonwealth v. Cinelli, 389 Mass. 197, 210 (1983); Commonwealth v. Borders, 73 Mass. App. Ct. 911, 912 (2009) ("Dismissal of a criminal complaint with prejudice is a draconian sanction that must be reserved for cases manifesting egregious prosecutorial misconduct or a serious threat of prejudice to the defendant.")

Here, there was no misconduct by the Commonwealth. The trial judge expressly disagreed with the defendant's argument that there was prosecutorial misconduct in this case (Tr.3-2/5). The trial judge did not make a finding that the Commonwealth withheld the discovery. He found only that the Commonwealth

had failed to turn over mandatory discovery. Even if the defendant had shown misconduct on the part of the Commonwealth, "The standard for prosecutorial misconduct mandating the dismissal of [a case] is high." Brangan v. Commonwealth, 478 Mass. 361, 366 (2017). When the prosecutor purposefully withholds evidence -- which is not the case here -- dismissal with prejudice is an inappropriate remedy in the absence of incurable prejudice to the defendant. See Commonwealth v. Sanford, 460 Mass. 441, 449-450 (2011) (defendant might be entitled to suppression of evidence if the Commonwealth intentionally or recklessly destroyed exculpatory evidence); Mason, 453 Mass. at 879 ("If, for example, the defendant had been able to show that the police misconduct had compromised his ability to challenge evidence collected by the police, the evidence could have been excluded at trial. Additional steps also could have been taken to ensure that the Commonwealth did not benefit from the wrongdoing by the police, such as allowing counsel for the defendant to establish, if called as prosecution witnesses, the possible bias of any officers who engaged in the misconduct.").

The Massachusetts Supreme Judicial Court has "never dismissed charges in such circumstances in the absence of prejudice." Mason, 453 Mass. at 877. Rather, the Court has emphasized that "any remedy should be tailored to cure the prejudice to the defendant. . . [b]ecause judicial responses should be limited to truly remedial, and not punitive, measures . . . ." Commonwealth v. Hine, 393 Mass.

564, 573 (1984). Once the judge concludes that a party has failed to turn over mandatory discovery, the judge must consider several factors in determining the appropriate remedy. "These factors are (1) the prevention of surprise; (2) the effectiveness of [less severe sanctions]; (3) evidence of bad faith; [and] (4) prejudice to the other party caused by the [evidence.]" Commonwealth v. Giontzis, 47 Mass. App. Ct. 450, 460 (1999); see Commonwealth v. Reynolds, 429 Mass. 388, 398 (1999), citing Commonwealth v. Durning, 406 Mass. 485, 496 (1990), and Commonwealth v. Chappee, 397 Mass. 508, 518 (1986).[8]

There was no unfair surprise here because defense counsel was aware of the discovery problem and the actual date of service (Tr.2-26/16). The purpose of modern discovery rules "is to prevent the admission of surprise evidence and the concomitant prejudice often associated with same." Commonwealth v. Eneh, 76 Mass. App. Ct. 672, 677 (2010), quoting Commonwealth v. Figueroa, 74 Mass. App. Ct. 784, 792 (2009) (internal quotations omitted). The defendant was on notice in the complaint and appended police report that there was a certificate of service in this case for the correct date of August 8, 2018 (R.A.8;Tr.2-26/20-21). When the pretrial judge asked defense counsel at the trial readiness conference if

[8] The fifth factor addressed in many of the discovery violation cases, "the materiality of the testimony to the outcome of the case," is not applicable here where the case was dismissed before a verdict. See Giontzis, 47 Mass. App. Ct. at 460.

he had been provided the restraining order, he responded that he had received it (Tr.1-8/3-4). The pretrial judge asked, "Is there any problem with service?" (Tr.1-8/4). Defense counsel responded, "I've been provided discovery." (Tr.1-8/4). At trial, defense counsel explained that it was his trial strategy not to raise the discovery issue until after the jury was sworn (Tr.2-26/16). The trial judge referred to this tactic as "waiting in the weeds" but did not find fault with it as a strategy (Tr.3-2/9-10). But see Commonwealth v. Frith, 458 Mass. 434, 443–444 (2010) ("[C]ontrary to the spirit of the Massachusetts Rules of Criminal Procedure, it becomes apparent from reading the transcript of the . . . pretrial hearing that defense counsel, an officer of the court, engaged in a game of 'gotcha' with respect to the unproduced police report.")

The trial judge purported to consider less severe sanctions. He considered excluding the certificate of service but found that the Commonwealth would call the police officer who served the order and that this would be "fundamentally unfair." (Tr.2-26/22). It is not fundamentally unfair to restrict the Commonwealth to presenting evidence to which the defendant was on notice from the police report. Cf. id. To be sure, an order excluding the certificate of service here would have been "an inappropriate sanction for the Commonwealth's alleged failure to provide discovery to the defendant in keeping with the pretrial conference report[,]" especially where the defendant was aware of the problem in advance of trial. See

Commonwealth v. Gonzalez, 437 Mass. 276, 279-280 (2002); see also Commonwealth v. Lowery, 487 Mass. 851, 869-870 (2021), quoting Reporters' Notes (Revised, 2004) to Rule 14 (c), Mass. Ann. Laws Court Rules, Rules of Criminal Procedure (LexisNexis 2021) ("Although the court may exercise its general sanction power under [Mass R. Crim. P. 14 (c) (2)] to exclude evidence, it is generally better to grant each party the freedom to present all relevant evidence at trial." [alterations in original]).

The appropriate remedy was to give the defendant more time, if he needed it, so "counsel could have made 'effective use of the evidence in preparing and presenting his case' by incorporating the information into the theory of the defense[.]" Eneh, 76 Mass. App. Ct. at 681. It is not 'fundamentally unfair" to allow the Commonwealth to present its case after giving the defendant sufficient time to refine his strategy and prepare a defense. See Lowery, 487 Mass. at 870-871 (judge acted within her discretion in admitting late-disclosed expert testimony from a police officer where the witness "largely repeated the same information contained in his affidavit in support of the cell phone search warrants" which had been turned over prior to trial, defense counsel noted that he was "not 'surprised'" by the testimony, and the judge gave defense counsel a day to prepare for cross-examination); Mason, 453 Mass. at 879 (police misconduct might prejudice the defendant if it prevented him from challenging certain evidence); cf.

Commonwealth v. Rodriguez-Nieves, 487 Mass. 171, 179 (2021) (prosecutor's late disclosure of evidence warranted a new trial where the defendant needed time to refine his strategy to be able to effectively counter the evidence).

There was no evidence of bad faith on behalf of the Commonwealth. The trial judge disagreed with defense counsel's suggestion that there had been any misconduct by the prosecutor (Tr.3-2/5). The discovery failure was clearly an oversight.

The defendant did not allege, let alone demonstrate, that he suffered any incurable prejudice. He argued that he had prepared for trial based on the evidence provided to him in discovery. He did not explain how, given more time, he could not have created a new strategy based on the late-disclosed certificate of service.[9] See Frith, 458 Mass. at 443 ("[T]he ADA's mistakes did not result in any prejudice to the defendant where defense counsel already had secured a copy of the unproduced police report from his client well before the trial date."); Gonzalez, 437 Mass. at 280 (no prejudice where "[t]he defendant's counsel never sought a continuance to make an 'independent investigation'" and there was no showing that the late-disclosed evidence was incompetent); Giontzis, 47 Mass. App. Ct. at

[9] It appears that defense counsel already had a backup strategy: arguing that "the witnesses were not able to discern who was driving by the home, as it was well past sunset at the time of the incident." (Tr.2-25/4).

460 ("[The judge could have, and perhaps should have, granted a short continuance, sua sponte, to allow defense counsel to, for example, interview" the undisclosed witness, but it was not an abuse of discretion where the defendant did not request a continuance). That defense counsel's strategy of "waiting in the weeds" was no longer available to him is not prejudice because "[m]odern rules of discovery were created to permit defense counsel to learn, through discovery of the government's evidence, what the defendant faces in standing trial, and to assist in preventing trial by ambush." Eneh, 76 Mass. App. Ct. at 677. The rules were not intended to provide a procedural mechanism to obtain a dismissal of charges by exploiting the Commonwealth's inadvertent failure to provide complete discovery. See Frith, 458 Mass. at 443–444; Hine, 393 Mass. at 573.

The discovery failure did not prevent the defendant from having a fair trial at some point in the future. See Lowery, 487 Mass. at 869-870; Rodriguez-Nieves, 487 Mass. at 179 ("The defendant has made the requisite showing of prejudice [warranting a new trial] by detailing the manner in which, had he been informed timely of Diaz's statements, he would have altered his defense tactics to undermine the veracity of Diaz's statements."); Gonzalez, 437 Mass. at 280 (no prejudice where the defendant was prepared to contest the Commonwealth's evidence). At a future trial, any "potential variations in the strength of the Commonwealth's case are a consequence of the defendant's tactical choices at [the first] trial," and the

defendant has not suffered any incurable prejudice caused by the Commonwealth's actions. See Commonwealth v. Brusgulis, 398 Mass. 325, 333–334 (1986) (footnote omitted). The trial judge erred and abused his discretion in dismissing the case with prejudice as a discovery sanction.

II. The prohibition against double jeopardy does not bar a retrial in this case because jeopardy did not terminate in an acquittal.

This Court may vacate the order dismissing the complaint with prejudice and remand the matter for a new trial without violating the prohibition against double jeopardy. "The Fifth Amendment to the United States Constitution prohibits the Federal government from subjecting a defendant to more than one prosecution for the same offense." Commonwealth v. Woods, 414 Mass. 343, 346 (1993); U.S. CONST. amend. V. (". . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb . . . "). "This prohibition was extended to the State governments through the due process clause of the Fourteenth Amendment." Woods, 414 Mass. at 346, citing Benton v. Maryland, 395 U.S. 784, 794 (1969). "Although not expressly included in the Massachusetts Declaration of Rights, the guarantee against double jeopardy has [also] long been recognized as part of our common law . . . and our statutory law[.]" Id., citing Thames v. Commonwealth, 365 Mass. 477, 479 (1974), and G. L. c. 263, § 7.

The prohibition against double jeopardy "protects criminal defendants against being subjected to consecutive prosecutions for the same offense after

acquittal or conviction, and against multiple punishments for the same offense absent an explicit legislative intent to permit multiple punishments." Commonwealth vs. Taylor, 96 Mass. App. Ct. 143, 150 (2019), citing Commonwealth v. Vick, 454 Mass. 418, 435 (2009). "The underlying idea . . . is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal[.]" Green v. United States, 355 U.S. 184, 187–188 (1957).

"The double jeopardy doctrine does not . . . prohibit consecutive prosecutions in every instance: its application is limited to instances in which jeopardy has actually attached and has then actually been terminated." Taylor, 96 Mass. App. Ct. at 150, citing Commonwealth v. Hebb, 477 Mass. 409, 412 (2017). "[O]rdinarily, jeopardy attaches when a jury is sworn . . . and terminates with an acquittal[.]" Id. Additionally, "[t]he Clause 'protects against a second prosecution for the same offense after conviction'; as well [as] protect[ing] against a second prosecution for the same offense after acquittal.'" Bravo-Fernandez v. United States, 137 S. Ct. 352, 357 (2016), quoting North Carolina v. Pearce, 395 U.S. 711, 717 (1969).

The Commonwealth agrees that jeopardy had attached in this case. "It is a well-settled rule in this Commonwealth that, in a jury trial, jeopardy attaches when

the jurors are sworn." Commonwealth v. Super, 431 Mass. 492, 496 (2000).[10] "[T]he double jeopardy clause does not necessarily prevent retrial of a defendant whose [case is dismissed] after jeopardy has attached[.]" Commonwealth v. Lam Hue To, 391 Mass. 301, 311 (1984). "When a defendant has been put in jeopardy for an offense and acquitted, he may not be retried for that offense." Commonwealth v. Lowder, 432 Mass. 92, 103 (2000), citing Sanabria v. United States, 437 U.S. 54, 64 (1978). "[W]hat constitutes an 'acquittal' is not to be controlled by the form of the judge's action. . . . Rather, [the Court] must determine whether the ruling of the judge, whatever its label, actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged." Commonwealth v. Babb, 389 Mass. 275, 281 (1983), quoting United States v. Martin Linen Supply Co., 430 U.S. 564, 571 (1977) (some alterations in original).

The trial judge's order of dismissal was not based on the Commonwealth's failure to prove the elements of the case but rather on his erroneous legal conclusion that it was "fundamentally unfair" to make the defendant go forward

[10] This is not a case where the trial was "an artifice designed to punish the Commonwealth, and it did not, in any realistic way, comport with the policy underlying the rule of double jeopardy." Gonzalez, 437 Mass. at 282. There is no suggestion here that the trial judge was trying to circumvent appellate review or improperly punish the Commonwealth. He simply failed to consider the relevant factors and applied an erroneous legal standard.

with trial and also "fundamentally unfair" to declare a mistrial. Under such circumstances, double jeopardy does not bar a retrial, and the dismissal "should be treated the same as a motion for mistrial." Brusgulis, 398 Mass. at 333, citing Lam Hue To, 391 Mass. at 311. "The usual rule is that 'a mistrial granted upon the defendant's request does not present a bar to retrial on double jeopardy grounds." Id., quoting Lam Hue To, 391 Mass. at 310; see Commonwealth v. Love, 452 Mass. 498, 505-506 (2008) (although jeopardy attached, "[a]llowing the trial to continue in the District Court [did] not impede the Commonwealth's strong interest in obtaining a fair trial" nor did it violate the double jeopardy prohibition because jeopardy did not terminate in the district court); cf. Vizcaino v. Commonwealth, 462 Mass. 266, 277–278 (2012) (assuming that jeopardy attached in a summary contempt proceeding, jeopardy did not terminate because the judge never entered a finding of summary contempt on the docket as the rule requires).

While the defendant did not move to dismiss the complaint, his strategy was to exploit the discovery failure to obtain a dismissal or a not guilty verdict (Tr.2-26/16). He did not object to the dismissal. See Lowder, 432 Mass. at 99 (if the judge declares a mistrial "over the defendant's objection without a manifest necessity for the act, the Commonwealth is barred on double jeopardy grounds from retrying the defendant.") Regardless of whether the defendant expressly asked for the dismissal, the trial did not terminate in an acquittal because "[a] true

acquittal requires a verdict on 'the facts and merits.'" Gonzalez, 437 Mass. at 282, quoting G. L. c. 263, § 7; cf. Lowder, 432 Mass. at 104-105 (double jeopardy barred retrial where the judge erroneously determined that the Commonwealth could not meet its burden based on its opening statement).

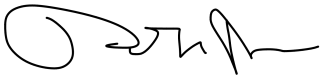
The trial judge specifically stated that the dismissal was a discovery sanction (Tr.2-26/22). He did not make a finding that the Commonwealth did not or could not meet its burden. Cf. Lowder, 432 Mass. at 104-105. He found that even if he excluded the certificate of service from evidence, the Commonwealth could still have proved its case beyond a reasonable doubt by presenting the testimony of the police officer who served the restraining order (Tr.2-26/22;Tr.3-2/9-10). Jeopardy did not terminate in an acquittal in this case. See Brusgulis, 398 Mass. at 333 (jeopardy did not terminate in an acquittal where "[t]he judge refused the defendant's repeated request for a required finding of not guilty[,] . . . did not otherwise indicate a ruling on the sufficiency of the Commonwealth's proof[,]" and there was no prosecutorial misconduct); cf. Super, 431 Mass. at 499 (double jeopardy prevented retrial of the defendant where the prosecutor refused to take part in the trial and the judge allowed the defendant's motion for a required finding of not guilty). The Court should vacate the order dismissing the case with prejudice and remand the matter for trial in the district court.

CONCLUSION

For the reasons set forth above the Commonwealth respectfully requests that this Honorable Court vacate the order dismissing the complaint with prejudice, reverse the order denying the Commonwealth's motion to reconsider, and remand the matter to the district court for trial in Springfield District Court No.1923-CR-001870.

Respectfully submitted,
THE COMMONWEALTH,
ANTHONY D. GULLUNI
District Attorney
Hampden District

Date: July 29, 2021



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ADDENDUM TABLE OF CONTENTS

ADDENDUM

G. L. c. 278, § 28E

Appeals by commonwealth

Section 28E. An appeal may be taken by and on behalf of the commonwealth by the attorney general or a district attorney from the district court to the appeals court in all criminal cases and in all delinquency cases from a decision, order or judgment of the court (1) allowing a motion to dismiss an indictment or complaint, (2) allowing a motion to suppress evidence, or (3) denying a motion to transfer pursuant to section sixty-one of chapter one hundred and nineteen.

An appeal may be taken by and on behalf of the commonwealth by the attorney general or a district attorney from the superior court to the supreme judicial court in all criminal cases from a decision, order or judgment of the court (1) allowing a motion to dismiss an indictment or complaint, or (2) allowing a motion for appropriate relief under the Massachusetts Rules of Criminal Procedure.

An application for an appeal from a decision, order or judgment of the superior court determining a motion to suppress evidence prior to trial may be filed in the supreme judicial court by a defendant or by and on behalf of the commonwealth by the attorney general or a district attorney. If such application is denied, or if such

application is granted but the interlocutory appeal is heard by a single justice, the determination of the motion to suppress evidence shall be open to review by the full court after trial in the same manner and to the same extent as determinations of such motions not appealed under the interlocutory procedure herein authorized.

Rules of practice and procedure with respect to appeals authorized by this section shall be the same as those applicable to criminal appeals under the Massachusetts Rules of Appellate Procedure.

Mass. R. Crim. P. 14

(a) Procedures for discovery

(1) Automatic discovery

(A) Mandatory discovery for the defendant

The prosecution shall disclose to the defense, and permit the defense to discover, inspect and copy, each of the following items and information at or prior to the pretrial conference, provided it is relevant to the case and is in the possession, custody or control of the prosecutor, persons under the prosecutor's direction and control, or persons who have participated in investigating or evaluating the case and either regularly report to the prosecutor's office or have done so in the case:

(i) Any written or recorded statements, and the substance of any oral statements, made by the defendant or a co-defendant.

(ii) The grand jury minutes, and the written or recorded statements of a person who has testified before a grand jury.

(iii) Any facts of an exculpatory nature.

(iv) The names, addresses, and dates of birth of the Commonwealth's prospective witnesses other than law enforcement witnesses. The Commonwealth shall also provide this information to the Probation Department.

(v) The names and business addresses of prospective law enforcement witnesses.

(vi) Intended expert opinion evidence, other than evidence that pertains to the defendant's criminal responsibility and is subject to subdivision (b)(2). Such discovery shall include the identity, current curriculum vitae, and list of publications of each intended expert witness, and all reports prepared by the expert that pertain to the case.

(vii) Material and relevant police reports, photographs, tangible objects, all intended exhibits, reports of physical examinations of any person or of scientific tests or experiments, and statements of persons the party intends to call as witnesses.

(viii) A summary of identification procedures, and all statements made in the presence of or by an identifying witness that are relevant to the issue of identity or to the fairness or accuracy of the identification procedures.

(ix) Disclosure of all promises, rewards or inducements made to witnesses the party intends to present at trial.

(B) Reciprocal discovery for the prosecution

Following the Commonwealth's delivery of all discovery required pursuant to subdivision (a)(1)(A) or court order, and on or before a date agreed to between the parties, or in the absence of such agreement a date ordered by the court, the defendant shall disclose to the prosecution and permit the Commonwealth to discover, inspect, and copy any material and relevant evidence discoverable under subdivision (a)(1)(A)(vi), (vii), and (ix) which the defendant intends to offer at trial, including the names, addresses, dates of birth, and statements of those persons whom the defendant intends to call as witnesses at trial.

(C) Stay of automatic discovery; sanctions

Subdivisions (a)(1)(A) and (a)(1)(B) shall have the force and effect of a court order, and failure to provide discovery pursuant to them may result in application of any sanctions permitted for non-compliance with a court order under subdivision 14(c). However, if in the judgment of either party good cause exists for declining to make any of the disclosures set forth above, it may move for a protective order pursuant to subdivision (a)(6) and production of the item shall be stayed pending a ruling by the court.

(D) Record of convictions of the defendant, codefendants, and prosecution witnesses

At arraignment the court shall order the Probation Department to deliver to the parties the record of prior complaints, indictments and dispositions of all defendants and of all witnesses identified pursuant to subdivisions (a)(1)(A)(iv) within 5 days of the Commonwealth's notification to the Department of the names and addresses of its witnesses.

(E) Notice and preservation of evidence

(i) Upon receipt of information that any item described in subparagraph (a)(1)(A)(i)-(viii) exists, except that it is not within the possession, custody or control of the prosecution, persons under its direction and control, or persons who have participated in investigating or evaluating the case and either regularly report to the prosecutor's office or have done so in the case, the prosecution shall notify the defendant of the existence of the item and all information known to the prosecutor concerning the item's location and the identity of any persons possessing it. (ii) At any time, a party may move for an order to any individual, agency or other entity in possession, custody or control of items pertaining to the case, requiring that such items be preserved for a specified period of time. The court shall hear and rule upon the motion expeditiously. The court may modify or vacate such an order upon a showing that preservation of particular evidence will

create significant hardship, on condition that the probative value of said evidence is preserved by a specified alternative means.

(2) Motions for discovery

The defendant may move, and following its filing of the Certificate of Compliance the Commonwealth may move, for discovery of other material and relevant evidence not required by subdivision (a)(1) within the time allowed by Rule 13(d)(1).

(3) Certificate of compliance

When a party has provided all discovery required by this rule or by court order, it shall file with the court a Certificate of Compliance. The certificate shall state that, to the best of its knowledge and after reasonable inquiry, the party has disclosed and made available all items subject to discovery other than reports of experts, and shall identify each item provided. If further discovery is subsequently provided, a supplemental certificate shall be filed with the court identifying the additional items provided.

(4) Continuing duty

If either the defense or the prosecution subsequently learns of additional material which it would have been under a duty to disclose or produce pursuant to any provisions of this rule at the time of a previous discovery order, it shall promptly notify the other party of its acquisition of such additional material and shall

disclose the material in the same manner as required for initial discovery under this rule.

(5) Work product

This rule does not authorize discovery by a party of those portions of records, reports, correspondence, memoranda, or internal documents of the adverse party which are only the legal research, opinions, theories, or conclusions of the adverse party or its attorney and legal staff, or of statements of a defendant, signed or unsigned, made to the attorney for the defendant or the attorney's legal staff.

(6) Protective orders

Upon a sufficient showing, the judge may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. The judge may alter the time requirements of this rule. The judge may, for cause shown, grant discovery to a defendant on the condition that the material to be discovered be available only to counsel for the defendant. This provision does not alter the allocation of the burden of proof with regard to the matter at issue, including privilege.

(7) Amendment of discovery orders

Upon motion of either party made subsequent to an order of the judge pursuant to this rule, the judge may alter or amend the previous order or orders as the interests of justice may require. The judge may, for cause shown, affirm a prior order

granting discovery to a defendant upon the additional condition that the material to be discovered be available only to counsel for the defendant.

(8)

A party may waive the right to discovery of an item, or to discovery of the item within the time provided in this Rule. The parties may agree to reduce or enlarge the items subject to discovery pursuant to subsections (a)(1)(A) and (a)(1)(B). Any such waiver or agreement shall be in writing and signed by the waiving party or the parties to the agreement, shall identify the specific items included, and shall be served upon all the parties.

(b) Special procedures

(1) Notice of alibi

(A) Notice by defendant

The judge may, upon written motion of the Commonwealth filed pursuant to subdivision (a)(2) of this rule, stating the time, date, and place at which the alleged offense was committed, order that the defendant serve upon the prosecutor a written notice, signed by the defendant, of his or her intention to offer a defense of alibi. The notice by the defendant shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defense intends to rely to establish the alibi.

(B) Disclosure of information and witness

Within seven days of service of the defendant's notice of alibi, the Commonwealth shall serve upon the defendant a written notice stating the names and addresses of witnesses upon whom the prosecutor intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

(C) Continuing duty to disclose

If prior to or during trial a party learns of an additional witness whose identity, if known, should have been included in the information furnished under subdivision (b)(1)(A) or (B), that party shall promptly notify the adverse party or its attorney of the existence and identity of the additional witness.

(D) Failure to comply

Upon the failure of either party to comply with the requirements of this rule, the judge may exclude the testimony of any undisclosed witness offered by such party as to the defendant's absence from or presence at the scene of the alleged offense. This rule shall not limit the right of the defendant to testify.

(E) Exceptions

For cause shown, the judge may grant an exception to any of the requirements of subdivisions (b)(1)(A) through (D) of this rule.

(F) Inadmissibility of withdrawn alibi

Evidence of an intention to rely upon an alibi defense, later withdrawn, or of statements made in connection with that intention, is not admissible in any civil or criminal proceeding against the person who gave notice of that intention.

(2) Mental health issues

(A) Notice

If a defendant intends at trial to raise as an issue his or her mental condition at the time of the alleged crime, or if the defendant intends to introduce expert testimony on the defendant's mental condition at any stage of the proceeding, the defendant shall, within the time provided for the filing of pretrial motions by Rule 13(d)(2) or at such later time as the judge may allow, notify the prosecutor in writing of such intention. The notice shall state:

(i)

whether the defendant intends to offer testimony of expert witnesses on the issue of the defendant's mental condition at the time of the alleged crime or at another specified time;

(ii)

the names and addresses of expert witnesses whom the defendant expects to call; and

(iii)

whether those expert witnesses intend to rely in whole or in part on statements of the defendant as to his or her mental condition.

The defendant shall file a copy of the notice with the clerk. The judge may for cause shown allow late filing of the notice, grant additional time to the parties to prepare for trial, or make such other order as may be appropriate.

(B) Examination

If the notice of the defendant or subsequent inquiry by the judge or developments in the case indicate that statements of the defendant as to his or her mental condition will be relied upon by a defendant's expert witness, the court, on its own motion or on motion of the prosecutor, may order the defendant to submit to an examination consistent with the provisions of the General Laws and subject to the following terms and conditions:

(i)

The examination shall include such physical, psychiatric, and psychological tests as the court-appointed examiner (examiner) deems necessary to form an opinion as to the mental condition of the defendant at the relevant time. No examination based on statements of the defendant may be conducted unless the judge has found that (a) the defendant then intends to offer into evidence expert testimony based on his or her own statements or (b) there is a reasonable likelihood that the defendant will offer that evidence.

(ii)

No statement, confession, or admission, or other evidence of or obtained from the defendant during the course of the examination, except evidence derived solely from physical examinations or tests, may be revealed to the prosecution or anyone acting on its behalf unless so ordered by the judge.

(iii)

The examiner shall file with the court a written report as to the mental condition of the defendant at the relevant time.

Unless the parties mutually agree to an earlier time of disclosure, the examiner's report shall be sealed and shall not be made available to the parties unless (a) the judge determines that the report contains no matter, information, or evidence which is based upon statements of the defendant as to his or her mental condition at the relevant time or which is otherwise within the scope of the privilege against self-incrimination; or (b) the defendant files a motion requesting that the report be made available to the parties; or (c) after the defendant expresses the clear intent to raise as an issue his or her mental condition, the judge is satisfied that (1) the defendant intends to testify, or (2) the defendant intends to offer expert testimony based in whole or in part on statements made by the defendant as to his or her mental condition at the relevant time.

At the time the report of the examiner is disclosed to the parties, the defendant shall provide the Commonwealth with a report of the defense psychiatric or psychological expert(s) as to the mental condition of the defendant at the relevant time.

The reports of both parties' experts must include a written summary of the expert's expected testimony that fully describes: the defendant's history and present symptoms; any physical, psychiatric, and psychological tests relevant to the expert's opinion regarding the issue of mental condition and their results; any oral or written statements made by the defendant relevant to the issue of the mental condition for which the defendant was evaluated; the expert's opinions as to the defendant's mental condition, including the bases and reasons for these opinions; and the witness's qualifications.

If these reports contain both privileged and nonprivileged matter, the court may, if feasible, at such time as it deems appropriate prior to full disclosure of the reports to the parties, make available to the parties the nonprivileged portions.

(iv)

If a defendant refuses to submit to an examination ordered pursuant to and subject to the terms and conditions of this rule, the court may prescribe such remedies as it deems warranted by the circumstances, which may include exclusion of the testimony of any expert witness offered by the defense on the issue of the

defendant's mental condition or the admission of evidence of the refusal of the defendant to submit to examination.

(C) Discovery for the purpose of a court-ordered examination under Rule 14(b)(2)(B)

(i)

If the judge orders the defendant to submit to an examination under Rule 14(b)(2)(B), the defendant shall, within fourteen days of the court's designation of the examiner, make available to the examiner the following:

(a) All mental health records concerning the defendant, whether psychological, psychiatric, or counseling, in defense counsel's possession;

(b) All medical records concerning the defendant in defense counsel's possession; and

(c) All raw data from any tests or assessments administered to the defendant by the defendant's expert or at the request of the defendant's expert.

(ii)

The defendant's duty of production set forth in Rule 14(b)(2)(C)(i) shall continue beyond the defendant's initial production during the fourteen-day period and shall apply to any such mental health or medical record(s) thereafter obtained by defense counsel and to any raw data thereafter obtained from any tests or assessments

administered to the defendant by the defendant's expert or at the request of the defendant's expert.

(iii)

In addition to the records provided under Rule 14(b)(2) (C)(i) and (ii), the examiner may request records from any person or entity by filing with the court under seal, in such form as the Court may prescribe, a writing that identifies the requested records and states the reason(s) for the request. The examiner shall not disclose the request to the prosecutor without either leave of court or agreement of the defendant.

Upon receipt of the examiner's request, the court shall issue a copy of the request to the defendant and shall notify the prosecutor that the examiner has filed a sealed request for records pursuant to Rule 14(b)(2)(C)(iii). Within thirty days of the court's issuance to the defendant of the examiner's request, or within such other time as the judge may allow, the defendant shall file in writing any objection that the defendant may have to the production of any of the material that the examiner has requested. The judge may hold an ex parte hearing on the defendant's objections and may, in the judge's discretion, hear from the examiner. Records of such hearing shall be sealed until the report of the examiner is disclosed to the parties under Rule 14(b)(2)(B)(iii), at which point the records related to the examiner's request, including the records of any hearing, shall be released to the

parties unless the court, in its discretion, determines that it would be unfairly prejudicial to the defendant to do so.

If the judge grants any part of the examiner's request, the judge shall indicate on the form prescribed by the Court the particular records to which the examiner may have access, and the clerk shall subpoena the indicated record(s). The clerk shall notify the examiner and the defendant when the requested record(s) are delivered to the clerk's office and shall make the record(s) available to the examiner and the defendant for examination and copying, subject to a protective order under the same terms as govern disclosure of reports under Rule 14(b)(2)(B)(iii). The clerk's office shall maintain these records under seal except as provided herein. If the judge denies the examiner's request, the judge shall notify the examiner, the defendant, and the prosecutor of the denial.

(iv)

Upon completion of the court-ordered examination, the examiner shall make available to the defendant all raw data from any tests or assessments administered to the defendant by the Commonwealth's examiner or at the request of the Commonwealth's examiner.

(D) Additional discovery

Upon a showing of necessity, the Commonwealth and the defendant may move for other material and relevant evidence relating to the defendant's mental condition.

(3) Notice of other defenses

If a defendant intends to rely upon a defense based upon a license, claim of authority or ownership, or exemption, the defendant shall, within the time provided for the filing of pretrial motions by Rule 13(d)(2) or at such later time as the judge may direct, notify the prosecutor in writing of such intention and file a copy of such notice with the clerk. If there is a failure to comply with the requirements of this subdivision, a license, claim of authority or ownership, or exemption may not be relied upon as a defense. The judge may for cause shown allow a late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(4) Self defense and first aggressor

(A) Notice by defendant

If a defendant intends to raise a claim of self defense and to introduce evidence of the alleged victim's specific acts of violence to support an allegation that he or she was the first aggressor, the defendant shall no later than 21 days after the pretrial hearing or at such other time as the judge may direct for good cause, notify the prosecutor in writing of such intention. The notice shall include a brief description of each such act, together with the location and date to the extent practicable, and the names, addresses and dates of birth of the witnesses the defendant intends to

call to provide evidence of each such act. The defendant shall file a copy of such notice with the clerk.

(B) Reciprocal disclosure by the Commonwealth

No later than 30 days after receipt of the defendant's notice, or at such other time as the judge may direct for good cause, the Commonwealth shall serve upon the defendant a written notice of any rebuttal evidence the Commonwealth intends to introduce, including a brief description of such evidence together with the names of the witnesses the Commonwealth intends to call, the addresses and dates of birth of other than law enforcement witnesses and the business address of law enforcement witnesses.

(C) Continuing duty to disclose

If prior to or during trial a party learns of additional evidence that, if known, should have been included in the information furnished under subdivision (b)(4)(A) or (B), that party shall promptly notify the adverse party or its attorney of such evidence.

(D) Failure to comply

Upon the failure of either party to comply with the requirements of this rule, the judge may exclude the evidence offered by such party on the issue of the identity of the first aggressor.

(c) Sanctions for noncompliance

(1) Relief for nondisclosure

For failure to comply with any discovery order issued or imposed pursuant to this rule, the court may make a further order for discovery, grant a continuance, or enter such other order as it deems just under the circumstances.

(2) Exclusion of evidence

The court may in its discretion exclude evidence for noncompliance with a discovery order issued or imposed pursuant to this rule. Testimony of the defendant and evidence concerning the defense of lack of criminal responsibility which is otherwise admissible cannot be excluded except as provided by subdivision (b)(2) of this rule.

(d) Definition

The term "statement", as used in this rule, means:

(1) a writing made, signed, or by a person having percipient knowledge of relevant facts and which contains such facts, other than drafts or notes that have been incorporated into a subsequent draft or final report; or

(2) a written, stenographic, mechanical, electrical, or other recording, or transcription thereof, which is a substantially verbatim recital of an oral declaration except that a computer assisted real time translation, or its functional equivalent, made to assist a deaf or hearing impaired person, that is not transcribed or permanently saved in electronic form, shall not be considered a statement.

MASS. R. APP. P. 16(K) CERTIFICATE OF COMPLIANCE WITH THE RULES PERTAINING TO THE FILING OF BRIEFS

I hereby certify, as required by Mass. R. App. P. 16(k), that this brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to, the following: Mass. R. App. P. 16(a)(1-8); Mass. R. App. P. 16(d)-(h); Mass. R. App. P. 18; and Mass. R. App. P. 20. I also certify that this brief is in Times New Roman 14-point proportional font and that the relevant sections contain no more than 11,000 words created in Microsoft Word 2016.

Date: July 29, 2021

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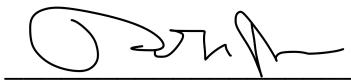
CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the Commonwealth's brief and appendix in the above-named case. I further certify that I have served a copy of this brief and appendix on the defendant, using the electronic filing system or electronic mail, to serve a copy on the defendant's counsel of record:

Attorney Joseph N. Schneiderman
connlawjoe@gmail.com

Signed on July 29, 2021, under the pains and penalties of perjury.



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COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

NO. 2021-P-0579

COMMONWEALTH OF MASSACHUSETTS,
Appellant

v.

CHRISTIAN EDWARDS,
Defendant-Appellee

BRIEF FOR THE COMMONWEALTH ON APPEAL FROM AN ORDER DISMISSING THE COMPLAINT WITH PREJUDICE AND THE DENIAL OF A MOTION TO RECONSIDER

HAMPDEN COUNTY
