

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

SUFFOLK, ss.

**SJC No. DAR-29149
App. Ct. No. 2022-P-0540**

**COMMONWEALTH OF MASSACHUSETTS
APPELLEE**

V.

**DANIEL BRUM
APPELLANT**

**ON APPEAL FROM A JUDGMENT OF THE
BRISTOL COUNTY SUPERIOR COURT**

APPLICATION FOR DIRECT APPELLATE REVIEW

**JOHN P. WARREN
Law Office of John P. Warren
55 Union Street, Fourth Floor
Boston, MA 02108
BBO #685597
(617) 383-4482
*john@johnpwarrenlaw.com***

December 22, 2022

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REQUEST FOR DIRECT APPELLATE REVIEW

This appeal presents an issue of first impression: the novel collision between the law involving substantive admission of inconsistent out-of-court identifications (*Daye/Cong Duc Le*) with the doctrine allowing for lay opinion testimony of identification from a video (*Pleas*). The victim's ex-girlfriend testified at trial that she did not know the identity of the perpetrator depicted in a video and that she had been pressured by the victim to claim otherwise to the grand jury. The trial judge then substantively admitted her grand jury testimony – an inconsistent, out-of-court identification of Mr. Brum from the video image. This grand jury statement was the only direct identification of Mr. Brum from any testifying witness. This Court should confirm that *Daye* and *Cong Duc Le* do not extend to lay opinions from non-percipient witnesses. This Court should also clarify that *Pleas*-type opinion evidence is inadmissible in hearsay form, particularly in these circumstances, where that opinion was the product of coercion and was ultimately disavowed by the witness at trial.

This case also presents the question of when, how, and under what conditions, a prosecutor may request that the jury identify the defendant from a video. The prosecutor here took the position pretrial that the “quality” of the video did not “lend itself to identification by members of the jury.”

However, in closing, he emphatically and repeatedly urged the jury to do just that. The jury heard these repeated calls to identify Mr. Brum from the video – as he sat before them at defense table – absent any instructions on how to evaluate such a request or make an identification in these circumstances, or on the significant risks of suggestion and misidentification involved in an in-court show-up of a suspect depicted at a distance on a less-than-clear video. This issue, worthy of *amici* input, deserves full scrutiny from this Court.

A third issue involves the erroneous admission of numerous hearsay, totem-pole hearsay, and speculative statements regarding the perpetrator's identity and motive, which served to improperly bulk up the Commonwealth's case. This evidence included inadmissible out-of-court statements of identification purportedly made by the victim – who asserted his Fifth Amendment privilege and did not testify – which were admitted through the grand jury testimony of his ex-girlfriend, who testified under a grant of immunity. Finally, absent a proper foundation, the Commonwealth improperly elicited a detective's opinion that a vehicle depicted on the video had a Florida license plate – an opinion derived entirely from a “clearer” video that was never shown to the jury.

Consideration of these novel and thorny issues, and the others raised herein, are particularly timely and important as

identification cases – the source of most wrongful convictions – are built on surveillance videos with increasing frequency. To resolve the conflict and misinterpretation of the law – and because his conviction stemmed from evidence, and arguments, that should never have been presented to the jury – Mr. Brum now requests that this Court grant direct appellate review pursuant to Mass. R.A.P. 11.

PRIOR PROCEEDINGS

On October 30, 2020, an indictment was returned charging Daniel Brum with one count of assault and battery with a dangerous weapon, G.L. c. 265, § 15A. (R1/42).¹ Trial commenced on June 22, 2021, before Cosgrove, J. (T6/3). The jury returned a verdict of guilty on the sole offense charged on June 25, 2021. (R1/197). Mr. Brum was sentenced to a term of four to seven years in the State Prison. (R2/203). A timely notice of appeal was filed. (R2/205). The matter was entered in the Appeals Court on June 7, 2022, as No. 2022-P-0540, and Mr. Brum’s brief was filed on December 5, 2022.

STATEMENT OF FACTS

The Commonwealth’s case for identification in the stabbing of Jordan Raposo boiled down to three pieces of

¹ The Record Appendices are referred to as (*Rvolume/page*). The Addendum is referred to as (*Addpage*). The transcripts are referred to as (*Tvolume/page*).

evidence: (1) a surveillance video, (2) attempts to link a vehicle depicted in the video to Mr. Brum's rental car, and (3) the testimony of an immunized witness, Mr. Raposo's ex-girlfriend Shyla Bizarro, and the substantive admission of statements she made to the grand jury. Mr. Raposo asserted his Fifth Amendment privilege and did not testify at trial. (T6/112). No percipient eyewitness testified that Mr. Brum was the perpetrator of the stabbing and the weapon used in the incident was never found.

1. Surveillance video.

The August 30, 2020 stabbing of Mr. Raposo in a convenience store parking lot in New Bedford was captured on surveillance video. (T7/111-117). The video appears to show Mr. Raposo walk out of the Richdale Food Market toward a minivan, when he is approached by the perpetrator – a light-skinned male, with short hair, wearing a light-colored t-shirt, and light-colored shoes. At the side of the minivan, the perpetrator punches Mr. Raposo, then jabs his arm towards Mr. Raposo's groin area multiple times – stabbing him, the Commonwealth alleged. The perpetrator then jogs away, as depicted in the following photograph still, introduced at trial:



(R2/108). The suspect gets into a dark-colored SUV – depicted in the photograph still below – backs out of a parking space and drives away.



(R2/112).²

2. The Commonwealth's attempt to link the dark-colored SUV in the surveillance video to Mr. Brum's rental vehicle.

Detective Eric Cardozo testified that he believed that the vehicle being driven by the perpetrator in the surveillance video was a "Ford Edge," that it was a rental, and that it had no front license plate. (T8/15-16,26,57). He also offered his opinion that it had a Florida rear license plate. (T8/16). On cross-examination, Detective Cardozo was unable to recognize the Florida license plate from any photograph or video footage in evidence. (T8/48,50-53,55,). Rather, Detective Cardozo testified that, in his office, he had viewed a "clearer" video than that introduced at trial, and that he had "zoom[ed] in" to see the Florida plate. The jury never saw this "clearer" video, nor any "zoom[ed] in" images.

The day after Mr. Raposo was stabbed, officers observed and seized an unoccupied 2020 black Ford Edge, with a Florida rear license plate and no front license plate, parked on a public street about a half-mile from Richdale Food Market. (T8/74-76). The parties stipulated that Mr. Brum had rented that particular 2020 black Ford Edge, and the Commonwealth introduced the rental agreement. (T8/23-

² The two trial exhibits, from which the images above were derived, are reprinted in full-size form in the Addendum.

24;R2/92-94).

The 2020 black Ford Edge rental vehicle had no visible blood stains but was swabbed for the presence of non-visible (occult) blood and DNA evidence. (T8/90-92). The upshot of this evidence was that four swabs tested presumptively positive for occult blood. (T8/94-95). Of those, two swabs likely contained Mr. Brum's DNA, although not necessarily DNA from his blood cells. (T8/101-103,111-113). There was no evidence that Mr. Raposo's DNA was located anywhere inside the rental vehicle. (T8/110-114).

3. Shyla Bizarro.

The testimony of Shyla Bizarro, Mr. Raposo's ex-girlfriend, who testified under a grand of immunity, was the subject of two motions *in limine*, objections by Mr. Brum, and a voir dire. (T9/25).

Voir dire of Ms. Bizarro. During a voir dire, Ms. Bizarro testified that she did not remember Mr. Raposo telling her "DB stabbed me" during a phone call after the stabbing. (T9/7). When asked to view still photographs from the Richdale Food Market surveillance video, Ms. Bizarro did not identify the suspect as Mr. Brum. (T9/16-17,26). She testified, "that could be anybody" and that it "looks like a random tall white guy." (T9/26-27). Ms. Bizarro testified repeatedly that she had been coerced by Mr. Raposo – the

victim – to tell police, and then the grand jury, that it was Mr. Brum who did the stabbing. (T9/7,8,11,13,17,19,22,26).

Ms. Bizarro's trial testimony. The jury heard that Ms. Bizarro's grant of immunity protected her from prosecution in her pending drug trafficking case, and for lying to police and offering perjurious grand jury testimony. (T9/64,93-94).

Ms. Bizarro testified that in August 2020, she was dating and living with Mr. Raposo. (T9/66-67). She knew Mr. Brum from the neighborhood. (T9/68).

When, at trial, she was shown a photograph still of the perpetrator from the surveillance video, Ms. Bizarro testified that she did not know that person and did not identify Mr. Brum. (T9/79). She testified, "this is a very poor quality picture/video, very far. It looks like an average tall white man." (T9/79).

The day of the stabbing, Mr. Raposo called her, and told her that he was hurt and to go to 19 Ruth Street. (T9/69-71). Mr. Raposo's voice was frantic and nervous, and he was breathing heavy. (T9/71-72). She did not remember Mr. Raposo telling her "DB stabbed me" during the phone call. (T9/89).

Ms. Bizarro acknowledged that she had offered grand jury testimony that it was Mr. Brum in the surveillance video but testified that she had lied and "was doing what I was told

by [Mr.] Raposo.” (T9/78-79,82). She stated that she had been pressured by Mr. Raposo, who was an “abusive boyfriend,” to say that Mr. Brum was the perpetrator. (T9/82-83,85).

Ms. Bizarro did not recall various statements purportedly made to police and the grand jury and testified that the days she spoke to police and testified before the grand jury were a “blur” and that she was in a “bad place mentally, physically.” (T9/74,80-81).

Ms. Bizarro’s grand jury testimony. The Commonwealth admitted, substantively and over objection, portions of Mr. Bizarro’s grand jury testimony, summarized below.

Mr. Brum and Mr. Raposo lived in an apartment together in July and August 2020, but Mr. Raposo kicked Mr. Brum out. (T9/98-99). Ms. Bizarro “thought” that Mr. Brum “got offended” when Mr. Raposo told him he had to leave, but Ms. Bizarro’s “wasn’t there” for an apparent argument between the two men. (T9/99).

The day of the stabbing, Mr. Raposo called Ms. Bizarro and told her that “DB stabbed me,” referring to Mr. Brum. (T9/100). Mr. Raposo was “flustered,” breathing heavy, and “talking loud.” (T9/100-101). Ms. Bizarro met Mr. Raposo, who was bleeding profusely, at 19 Ruth Street. (T9/101-102).

Ms. Bizarro spoke with a detective and told him that Mr. Brum committed the stabbing, although the underlying basis

for that statement was unclear. (T9/102). When shown video surveillance at grand jury, Ms. Bizarro identified Mr. Brum as the perpetrator, testifying that she was positive it was him. (T9/104-105). Ms. Bizarro testified that she recognized it was Mr. Brum “by his clothes, by the way he’s walking. He has a very distinctive walk, everything.” (T9/108).

Mr. Brum’s registered car was a blue Honda. (T9/106). Ms. Bizarro testified that she “knew” Mr. Brum was driving a rental on the date of the incident “because he gets [rental vehicles] often.” (T9/106-107).

4. Other evidence.

After the stabbing, Mr. Raposo drove to 19 Ruth Street, where Mr. Brum’s brother, Andrew, lived with his wife. (T7/35-36,78). Mr. Raposo came into the backyard, bleeding significantly from the waist down, and Andrew, his wife, and his wife’s cousin rendered aid and called 911. (T7/37-38,80-83). Officers showed Andrew surveillance video on a cell phone, presumably of the incident outside Richdale Food Market, but Andrew could not tell what was going on in the video. (T7/87-88). Medical records admitted by the Commonwealth included Mr. Raposo’s statement that an “unknown” person committed the attack. (R2/15).

ISSUES PRESENTED

1. Whether grand jury testimony from a lay person viewing a surveillance video as to the identity of the perpetrator was improperly admitted (over objection) as substantive evidence where the witness, who was now under a grant of immunity, recanted that identification at trial.
2. Whether the prosecutor – who had taken the position in a pretrial filing that the “quality” of the surveillance video was such that it would not “lend itself to identification by members of the jury” – committed reversible error by repeatedly imploring the jury in his closing to identify Mr. Brum from the video, particularly where the jury was not instructed on making such an identification.
3. Whether the Court erred in admitting (over objection) numerous hearsay, totem pole hearsay, and speculative statements of the complainant’s ex-girlfriend as evidence of the perpetrator’s identity and motive.
4. Whether it was reversible error for the Commonwealth to introduce (over objection) a detective’s lay opinion that a vehicle depicted on surveillance video had a Florida license plate, where only on cross-examination did it emerge that he rendered that opinion by “zoom[ing]” into a “clearer” video that the Commonwealth never introduced at trial.

ARGUMENT

I. The introduction of the grand jury testimony of the victim's ex-girlfriend purporting to identify the perpetrator from a video after she had disavowed that identification at trial and claimed that she had been coerced into previously making it was improper.

At trial, Ms. Bizarro recanted her prior statements identifying Mr. Brum as the perpetrator from the surveillance video, testifying that she did not know the identity of the person depicted therein. (T9/79). Nevertheless, over objection, the Commonwealth introduced Ms. Bizarro's grand jury testimony identifying Mr. Brum in the video as substantive evidence of the perpetrator's identity. (T9/59-60).

A. *Cong Duc Le* and *Daye* do not extend to *non-percipient* lay opinion statements.

Under the general rule set forth in *Cong Duc Le* and *Daye*, "statements of identification are admissible substantively so long as 'the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement,' regardless of whether the witness admits, denies, or does not remember the statement." *Commonwealth v. Herndon*, 475 Mass. 324, 332-33 (2016), quoting *Commonwealth v. Cong Duc Le*, 444 Mass. 431, 436 (2005).

However, *Cong Duc Le* and *Daye* are concerned with *percipient* witnesses. *Commonwealth v. Daye*, 393 Mass. 55,

73 & n.18 (1984) (“predicat[ing] probative use of prior inconsistent statements on a showing that the declarant was a *percipient witness* to the events in question,” emphasis added); *Cong Duc Le*, 444 Mass. at 437 (prior statement must be “one of identification of a person made after *perceiving* him,” emphasis added). Ms. Bizarro was *not* a percipient witness, and her grand jury testimony was not eyewitness testimony. Rather, it was lay opinion identification evidence from a less-than-clear video. See *Commonwealth v. Pleas*, 49 Mass. App. Ct. 321, 323-329 (2000).

Undersigned counsel is aware of no Massachusetts appellate decision explicitly extending the *Cong Duc Le/Daye* doctrine to non-percipient testimony regarding an opinion as to the identity of someone in a video. Such an extension would undercut the “fundamental premise” of the *Cong Duc Le/Daye* rule that such evidence is of “substantive value” based on the temporal connection between the identification statement and the perceived event. *Commonwealth v. Raedy*, 68 Mass. App. Ct. 440, 449 (2007). That justification does not hold for *Pleas*-type lay opinion testimony from a witness who did not perceive the event.

B. Recanted, out-of-court statements are not admissible under *Pleas*.

Meanwhile, under *Pleas*, 49 Mass. App. Ct. at 323-329, “a witness’s opinion concerning the identity of a person

depicted in a surveillance photograph is admissible if there is some basis for concluding that the witness is more likely to correctly identify the defendant from the photograph than is the jury.” The purpose of a lay witness identification is to “assist the jurors in making their own independent identification.” *Commonwealth v. Wardsworth*, 482 Mass. 454, 475 (2019).

No case – that counsel has found – has squarely considered and upheld the admission of hearsay *Pleas*-type opinion evidence from a recanting witness. It would, indeed, be the rare case in which hearsay concerning a witness’s lay opinion, disavowed at trial, nevertheless “provided enough information to allow the jury to conduct an independent assessment of the accuracy and reliability” of that recanted identification. *Commonwealth v. Connolly*, 91 Mass. App. Ct. 580, 592-593 (2017).

C. The recanted identification was not “helpful,” was unduly prejudicial, and was unreliable.

Putting aside the evidentiary hurdles imposed as a matter of law by *Cong Duc Le/Daye* and *Pleas*, Ms. Bizarro’s lay opinion, admitted in hearsay form, was hardly “helpful” to the jury. *Connolly*, 91 Mass. App. Ct. at 592-593. At trial, Ms. Bizarro recanted that opinion, testified that it had been coerced, and articulated why she was *unable* to identify Mr. Brum from the video: “this is a very poor quality

picture/video,” from “very far” away, and the perpetrator “looks like an average tall white man.” (T9/79,82-83,85). Meanwhile, her grand jury testimony contained only limited support for her later-recanted opinion: that she recognized Mr. Brum, “by his clothes” and “by the way he’s walking ... [h]e has a very distinctive walk.” (T9/108). There was no explanation – in either her trial testimony or grand jury statements – detailing how she reached these conclusions, or any other information that would have enabled the jury to independently assess whether her opinion was “accurate” and “reliable.” The reliability of her grand jury statements was further diminished where Ms. Bizarro was immunized from prosecution for potentially perjurious grand jury testimony.

II. The prosecutor’s repeated requests in closing for the jury to identify Mr. Brum from a video – reversing its pretrial position – was improper.

This case follows *Commonwealth v. Davis*, 487 Mass. 448, 465-469 (2021), which held that the Commonwealth’s suggestions that the jury could identify the defendant from a video – which was “not high enough resolution and [was] taken from too far away to be able to discern any features of the shooter’s face” – were improper. The video here was similarly not particularly high resolution, and it depicted the perpetrator from an elevated vantage point, at a distance.

Pretrial, the prosecutor properly characterized the

video, indicating that the video was “a bit grainy,” that the quality was not “great,” and that “you can’t exactly make out who [the suspect] is.” (T4/8,16-17). In a pretrial filing, Commonwealth wrote that the video was “not of the clearest and best quality as that [sic] it would lend itself to identification by members of the jury.” (R1/91). But then the prosecutor asked the jury to do just that.

In closing, the prosecutor repeatedly implored the jury to identify Mr. Brum from the video, describing it as “a beautiful video.” (T9/136,141). He argued that the jury could “throw out” certain other pieces of evidence because “[y]ou see this video. You can see Mr. Brum.” (T9/137). He continued, “[t]ake a look at the video. Who do you see in that video? You see Daniel Brum.” (T9/140). He argued further: “[w]hen it comes down to it, do you see Daniel Brum in the video?” and, “[i]s that not Daniel Brum? I suggest to you it is Daniel Brum in the video.” (T9/140). Given the distance of the perpetrator from the camera, the quality of the footage, and the lack of defining characteristics of the perpetrator depicted therein, as in *Davis*, these arguments – which contradicted the Commonwealth’s pretrial position – were improper. See *Davis*, 487 Mass. at 469.

Moreover, much like a witness’s one-on-one identification, a prosecutor’s request that a *jury* identify the defendant from a video carries a risk of unfair suggestiveness

and potential misidentification. See, e.g., *Commonwealth v. Forte*, 469 Mass. 469, 477 (2014) (identifications from video are inherently suggestive). This is particularly so where, as here, the prosecutor's requests were repeated, see e.g., *Wardsworth*, 482 Mass. at 477 (testimony that officers viewed video "over and over" suggested that their opinions merited greater weight), the footage was not at close-range, see e.g., *Commonwealth v. Vazquez*, 482 Mass. 850, 860 (2019) (risk of erroneous identification heightened where quality of video is limited), and the jury received no instructions on the inherent risks of making such an identification determination, contrast, e.g., *Commonwealth v. Gomes*, 470 Mass. 532 (2015) (establishing science-based jury instructions for eyewitness identifications).

In addition to reversing Mr. Brum's conviction on this basis, this Court should provide guidance on a prosecutor's request that the jury identify a defendant: when is such argument permissible; what rules apply; and what instructions should the jury receive.

III. The trial judge erred in admitting wholly inadmissible hearsay and speculation through the complainant's ex-girlfriend.

Mr. Raposo's purported statement, "DB stabbed me." Ms. Bizarro testified at trial that she did not remember Mr. Raposo telling her "DB stabbed me." (T9/71,89).

Nevertheless, over objection, this totem-pole hearsay was admitted under the theory that Mr. Raposo's statement was a non-testimonial excited utterance, properly admitted through Ms. Bizarro's grand jury testimony as substantive evidence under *Daye*. (T9/49-50).

The substantive admission of Mr. Raposo's statement, through Ms. Bizarro's grand jury testimony, contravened black-letter law in *Daye* that, "both as an evidentiary and constitutional matter, the admissibility of such [inconsistent grand jury] statements is contingent on an opportunity for effective cross-examination of the *declarant* at trial." *Daye*, 393 Mass. at 73 & n.18 (emphasis added) (predicating rule on showing that the declarant was a percipient witness to the events in question). See *Cong Duc Le*, 444 Mass. at 436-438. Mr. Raposo, *not* Ms. Bizarro, was the declarant of the statement "DB stabbed me," and he did not testify at trial.

The import of this erroneously admitted evidence cannot be overstated: it purported to be a statement from the victim identifying the perpetrator.

Ms. Bizarro's testimony that she was compelled by Mr. Raposo to blame Mr. Brum for the attack. The Commonwealth repeatedly elicited testimony from Ms. Bizarro that Mr. Raposo told her to accuse Mr. Brum of the stabbing. To the (unlikely) extent that this evidence was offered for the truth – i.e., that Mr. Brum was the perpetrator

(an unreasonable inference to draw from Ms. Bizarro's testimony) – it falls under no cognizable hearsay exception. Alternatively, to the extent that this evidence was being offered, not for the truth, but as evidence of Ms. Bizarro's motive to lie to the police and the grand jury, the evidence was similarly inadmissible. It served no proper purpose in advancing the Commonwealth's case, which was built in part on the theory that Ms. Bizarro's grand jury testimony was *truthful*. Particularly in the absence of a limiting instruction, this evidence was undoubtedly considered for its improper purpose: that Mr. Raposo, who did not testify, wanted Mr. Brum to be blamed for the attack.

Ms. Bizarro's statement to a detective that Mr. Brum was the perpetrator, admitted through her grand jury testimony. Insofar as Ms. Bizarro's grand jury statement, that she had told a detective that she "knew" Mr. Brum was the perpetrator (T9/102), was based on information Ms. Bizarro learned from Mr. Raposo, it violated *Daye's* requirement that the *declarant* (i.e., Mr. Raposo) be subject to cross-examination. *Daye*, 393 Mass. at 73 & n.18. As an additional layer of unfair prejudice, it also constituted an opinion of guilt, with *zero* foundational explanation for how or why she reached that conclusion.

Speculation about Mr. Brum's motive. Through Ms.

Bizarro's grand jury testimony, the Commonwealth also admitted totem-pole hearsay (inferentially from Mr. Raposo) speculating that Mr. Brum was upset with Mr. Raposo. This evidence was pure speculation, was admitted without proper foundation, and was immensely prejudicial, constituting the *sole* motive evidence in the case.

Speculation that Mr. Brum was driving a rental vehicle. Ms. Bizarro's grand jury statement that she "knew" Mr. Brum was driving a rental vehicle on the day of the stabbing, "because he gets [rentals] often" (T9/106-107), was complete speculation. There was no evidence that Ms. Bizarro saw Mr. Brum that day, or any other legitimate foundational basis for the admission of that statement.

IV. The admission of a detective's opinion that he saw a Florida license plate in a "clearer" video – which was never shown to the jury or provided to the defendant – was error.

Prior to eliciting Detective Cardozo's opinion that he recognized a Florida license plate from the video (T8/17), the Commonwealth introduced no evidence regarding how, from which video, and under what conditions, Detective Cardozo made this determination. A proper foundation must be laid *before* the proffered evidence is introduced. *Connolly*, 91 Mass. App. Ct. at 588-590 (Commonwealth had obligation to first lay sufficient foundation before introducing officer's

testimony regarding video).

Detective Cardozo's opinion was also unduly prejudicial where it was purportedly based, not on any evidence admitted at trial, but on some unknown "clearer" video he watched in his office. Because this "clearer" video was never shown at trial, as in *Connolly*, "the jury had no information that would have allowed them to independently assess the reliability of that description." *Id.* at 594, citing approvingly *People v. Sykes*, 362 Ill. Dec. 239 (2012) (officer's lay opinion from "purportedly clearer" video than that offered at trial improperly "invaded the province of the jury").

CONCLUSION

For all of these reasons, this Court should grant Mr. Brum's request for direct appellate review.

Respectfully submitted,

/s/ John P. Warren

John P. Warren
Law Office of John P. Warren
55 Union Street, Fourth Floor
Boston, MA 02108
BBO #685597
(617) 383-4482
john@johnpwarrenlaw.com

Date: December 22, 2022

ADDENDUM

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Docket sheets.....	26
Copies of trial exhibits 13(M) and 13(Q) reprinted in full-size form³	40

³ These exhibits were scanned onto a computer by the Clerk's Office and emailed to undersigned counsel.

2073CR00227 Commonwealth vs. Brum, Daniel M

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 10/30/2020
- DCM Track:
- A - Standard
- Initiating Action:
- A&B WITH DANGEROUS WEAPON c265 §15A(b)
- Status Date:
- 11/25/2020
- Case Judge:
- Cosgrove, Hon. Robert C
- Next Event:
-

[All Information](#)
[Party](#)
[Charge](#)
[Event](#)
[Tickler](#)
[Docket](#)
[Disposition](#)

Party Information

Bristol County District Attorney
- Prosecutor

[Alias](#)

Party Attorney

- Attorney
- Mark, Esq., David B
- Bar Code
- 320510
- Address
- Office of the District Attorney, Bristol District
- 888 Purchase St
- New Bedford, MA 02740
- Phone Number
- (508)961-1868

[More Party Information](#)

Brum, Daniel M
- Defendant

[Alias](#)

Party Attorney

[More Party Information](#)

Party Charge Information

- **Brum, Daniel M**
- - Defendant
- Charge # 1:
- **265/15A/A-1 - Felony** A&B WITH DANGEROUS WEAPON c265 §15A(b)
-
- Original Charge
- 265/15A/A-1 A&B WITH DANGEROUS WEAPON c265 §15A(b) (Felony)
- Indicted Charge
-
- Amended Charge

Charge Disposition

Disposition Date

Disposition

06/25/2021

Guilty Verdict

Events

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
11/24/2020 11:00 AM	Criminal 1 (Fall River)	Courtroom 8	Arraignment	McGuire, Jr., Hon. Thomas F	Rescheduled
11/24/2020 11:00 AM	Criminal 3 (Fall River)	Courtroom 6	Arraignment	Yessayan, Hon. Raffi N	Rescheduled
11/24/2020 11:00 AM	Criminal 3 (Fall River)	Courtroom 6	58A Dangerousness Hearing	Yessayan, Hon. Raffi N	Rescheduled
11/24/2020 11:00 AM	Criminal 1 (Fall River)	Courtroom 8	58A Dangerousness Hearing	McGuire, Jr., Hon. Thomas F	Rescheduled
11/25/2020 02:00 PM	Criminal 3 (Fall River)	Courtroom 6	Arraignment	Yessayan, Hon. Raffi N	Held as Scheduled
11/25/2020 02:00 PM	Criminal 3 (Fall River)	Courtroom 6	58A Dangerousness Hearing	Yessayan, Hon. Raffi N	Held - Under advisement
12/17/2020 02:00 PM	Criminal 1 (Fall River)	Courtroom 8	Motion Hearing	McGuire, Jr., Hon. Thomas F	Rescheduled
12/21/2020 02:00 PM	Criminal 1 (Fall River)	Courtroom 8	Motion Hearing	McGuire, Jr., Hon. Thomas F	Held as Scheduled
02/23/2021 09:00 AM	Criminal 1 (Fall River)	Courtroom 8	Trial Assignment Conference	Yessayan, Hon. Raffi N	Rescheduled
02/23/2021 09:00 AM	Criminal 2 (Fall River)	Courtroom 7	Trial Assignment Conference	Donatelle, Hon. Sharon	Held as Scheduled
04/16/2021 09:00 AM	Criminal 1 (Fall River)	Courtroom 8	Final Pre-Trial Conference	Perrino, Hon. Thomas J	Rescheduled
04/16/2021 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Final Pre-Trial Conference	Cosgrove, Hon. Robert C	Rescheduled
04/16/2021 09:00 AM	Criminal 2 (Fall River)	Courtroom 7	Bail Hearing	Perrino, Hon. Thomas J	Rescheduled
04/16/2021 09:00 AM	Criminal 2 (Fall River)	Courtroom 7	Final Pre-Trial Conference	Perrino, Hon. Thomas J	Rescheduled
04/16/2021 02:00 PM	Criminal 1 (Fall River)	Courtroom 8	Bail Hearing	Yessayan, Hon. Raffi N	Rescheduled
04/26/2021 09:00 AM	Criminal 1 (Fall River)	Courtroom 8	Jury Trial	Perrino, Hon. Thomas J	Rescheduled
04/26/2021 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Jury Trial	Cosgrove, Hon. Robert C	Rescheduled
04/26/2021 02:00 PM	Criminal 1 (Fall River)	Courtroom 8	Bail Hearing	Yessayan, Hon. Raffi N	Held as Scheduled
05/24/2021 09:00 AM	Criminal 2 (Fall River)	Courtroom 7	Final Pre-Trial Conference	Perrino, Hon. Thomas J	Rescheduled
05/24/2021 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Final Pre-Trial Conference	Cosgrove, Hon. Robert C	Rescheduled
06/03/2021 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Final Pre-Trial Conference	Cosgrove, Hon. Robert C	Held as Scheduled
					Held - Under advisement

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
06/03/2021 09:30 AM	Criminal 4 (Fall River)	Courtroom 9	Hearing on Motion(s) in Limine	Cosgrove, Hon. Robert C	
06/07/2021 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Jury Trial	Cosgrove, Hon. Robert C	Rescheduled
06/14/2021 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Jury Trial	Cosgrove, Hon. Robert C	Rescheduled
06/16/2021 02:00 PM	Criminal 4 (Fall River)	Courtroom 9	Trial Readiness Conference	Cosgrove, Hon. Robert C	Held via Video/Teleconference
06/22/2021 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Jury Trial	Cosgrove, Hon. Robert C	Held as Scheduled
06/23/2021 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Jury Trial	Cosgrove, Hon. Robert C	Held as Scheduled
06/24/2021 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Jury Trial	Cosgrove, Hon. Robert C	Held as Scheduled
06/25/2021 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Jury Trial	Cosgrove, Hon. Robert C	Held as Scheduled
06/28/2021 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Jury Trial	Cosgrove, Hon. Robert C	Canceled
06/28/2021 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Hearing for Sentence Imposition	Cosgrove, Hon. Robert C	Held as scheduled

Ticklers

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Under Advisement	11/25/2020	11/25/2020	0	11/25/2020
Pre-Trial Hearing	11/25/2020	02/23/2021	90	06/03/2021
Final Pre-Trial Conference	11/25/2020	05/10/2021	166	06/03/2021
Case Disposition	11/25/2020	05/24/2021	180	06/25/2021

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
10/30/2020	Indictment(s) returned	1	Image
10/30/2020	Attorney appearance On this date 10/30/2020 Guilderson, Esq., Shawn added for Bristol County District Attorney		
11/09/2020	Attorney appearance On this date Ian Thomas Davis, Esq. added as Private Counsel for Defendant Daniel M Brum		
11/09/2020	Scheduled: Judge: McGuire, Jr., Hon. Thomas F Event: 58A Dangerousness Hearing Date: 11/24/2020 Time: 11:00 AM Result: Rescheduled		
11/10/2020	Event Result:: 58A Dangerousness Hearing scheduled on: 11/24/2020 11:00 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. Thomas F McGuire, Jr., Presiding Staff:		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
11/10/2020	Scheduled: Judge: Yessayan, Hon. Raffi N Event: 58A Dangerousness Hearing Date: 11/24/2020 Time: 11:00 AM Result: Rescheduled		
11/10/2020	Event Result:: Arraignment scheduled on: 11/24/2020 11:00 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. Thomas F McGuire, Jr., Presiding Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
11/17/2020	Event Result:: Arraignment scheduled on: 11/24/2020 11:00 AM Has been: Rescheduled For the following reason: By Court due to Covid-19 Hon. Raffi N Yessayan, Presiding Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
11/17/2020	Event Result:: 58A Dangerousness Hearing scheduled on: 11/24/2020 11:00 AM Has been: Rescheduled For the following reason: By Court due to Covid-19 Hon. Raffi N Yessayan, Presiding Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
11/17/2020	Scheduled: Judge: Yessayan, Hon. Raffi N Event: 58A Dangerousness Hearing Date: 11/25/2020 Time: 02:00 PM Result: Held - Under advisement		
11/18/2020	Motion for 58A dangerousness hearing filed.	2	Image
11/18/2020	Commonwealth's Motion for Order for Taking of DNA Sample of the Defendant, with accompanying affidavit in support thereof, and proposed order	3	Image
11/18/2020	Commonwealth's Motion for Order for Taking of DNA Sample of the Victim, with accompanying affidavit in support thereof, and proposed order	4	Image
11/18/2020	List of exhibits Commonwealth's	4.1	Image
11/25/2020	Defendant's Motion for Funds for Private Investigator, with accompanying affidavit in support thereof	5	Image
11/25/2020	Defendant's EX PARTE Motion for Additional Funds for DNA Expert, with accompanying affidavit in support thereof	6	Image
11/25/2020	Matter taken under advisement: 58A Dangerousness Hearing scheduled on: 11/25/2020 02:00 PM Has been: Held - Under advisement Hon. Raffi N Yessayan, Presiding Staff: Aaron T Strojny, Assistant Clerk Magistrate Digital Recording Device Bris CR3, Court Reporter		
11/25/2020	Event Result:: Arraignment scheduled on: 11/25/2020 02:00 PM		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Has been: Held as Scheduled Hon. Raffi N Yessayan, Presiding Staff: Aaron T Strojny, Assistant Clerk Magistrate Digital Recording Device Bris CR3, Court Reporter		
11/25/2020	Defendant arraigned before Court. Judge: Yessayan, Hon. Raffi N		
11/25/2020	Defendant waives reading of indictment Judge: Yessayan, Hon. Raffi N		
11/25/2020	Plea of not guilty entered on all charges. Judge: Yessayan, Hon. Raffi N		
11/25/2020	The defendant\petitioner is committed without bail for the following reason: Pending dangerousness hearing.	7	
11/25/2020	List of exhibits (58A Hearing)	7.1	
11/30/2020	The defendant\petitioner is committed without bail for the following reason: Held due to dangerousness C.276 § 58A.	8	Image
11/30/2020	Findings and Order on Motion for Detention pursuant to G.L. c. 276 § 58A. Judge: Yessayan, Hon. Raffi N	9	Image
11/30/2020	Endorsement on Motion for Funds for Private Investigator, (#5.0): ALLOWED Judge: Yessayan, Hon. Raffi N		Image
11/30/2020	The following form was generated: A Clerk's Notice RE: P#5 was generated and sent to: Defendant, Attorney: Ian Thomas Davis, Esq. Ian Davis, Esquire 55 Union St Fourth Floor, Boston, MA 02108 Prosecutor, Attorney: Shawn Guilderson, Esq. Bristol County District Attorney's Office Fall River Justice Center 186 South Main Street, Fall River, MA 02721		
11/30/2020	Endorsement on Motion for Additional Funds for DNA Expert, (#6.0): ALLOWED Judge: Yessayan, Hon. Raffi N		Image
11/30/2020	The following form was generated: A Clerk's Notice RE: P#6 was generated and sent to: Defendant, Attorney: Ian Thomas Davis, Esq. Ian Davis, Esquire 55 Union St Fourth Floor, Boston, MA 02108 Prosecutor, Attorney: Shawn Guilderson, Esq. Bristol County District Attorney's Office Fall River Justice Center 186 South Main Street, Fall River, MA 02721		
12/15/2020	Event Result:: Motion Hearing scheduled on: 12/17/2020 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Thomas F McGuire, Jr., Presiding Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
12/21/2020	Event Result:: Motion Hearing scheduled on: 12/21/2020 02:00 PM Has been: Held as Scheduled Hon. Thomas F McGuire, Jr., Presiding Appeared: Prosecutor Shawn Guilderson, Esq., Defendant Daniel M Brum Ian Thomas Davis, Esq., Private Counsel Staff: Erin J Tierney, Assistant Clerk Magistrate		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
12/31/2020	Docket Note: Docket Report mailed to defendant at BCHOC per his phone request this date.		
01/04/2021	Endorsement on Motion for Order for Takin of DNA Sample of the Defendant, (#3.0): ALLOWED Judge: McGuire, Jr., Hon. Thomas F		Image
01/04/2021	Endorsement on Motion for Order for Taking of DNA Sample of the Victim, (#4.0): ALLOWED After notice to Jordan Raposo and Without Objection. Judge: McGuire, Jr., Hon. Thomas F		Image
01/05/2021	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Ian Thomas Davis, Esq. Ian Davis, Esquire 55 Union St Fourth Floor, Boston, MA 02108 Prosecutor, Attorney: Shawn Guilderson, Esq. Bristol County District Attorney's Office Fall River Justice Center 186 South Main Street, Fall River, MA 02721		
01/05/2021	ORDER: FOR DNA SAMPLE OF THE DEFENDANT Judge: McGuire, Jr., Hon. Thomas F	10	Image
01/05/2021	The following form was generated: A Clerk's Notice RE: P#4 was generated and sent to: Defendant, Attorney: Ian Thomas Davis, Esq. Ian Davis, Esquire 55 Union St Fourth Floor, Boston, MA 02108 Prosecutor, Attorney: Shawn Guilderson, Esq. Bristol County District Attorney's Office Fall River Justice Center 186 South Main Street, Fall River, MA 02721		
02/10/2021	Event Result:: Trial Assignment Conference scheduled on: 02/23/2021 09:00 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. Raffi N Yessayan, Presiding Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
02/11/2021	Pro Se Defendant 's Request for copy of his docket sheet. Mailed to him this day at the NBHOC.	11	Image
02/12/2021	Case assigned to: DCM Track A - Standard was added on 02/12/2021		
02/23/2021	Event Result:: Trial Assignment Conference scheduled on: 02/23/2021 09:00 AM Has been: Held as Scheduled Hon. Sharon Donatelle, Presiding Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter 02/23/2021 09:00 AM		
02/23/2021	Scheduled: Judge: Perrino, Hon. Thomas J Event: Jury Trial Date: 04/26/2021 Time: 09:00 AM Result: Rescheduled		
02/23/2021	Document: Notice to Appear for Final Pretrial on April 16, 2021 at 9:00 a.m. in CR8 Sent On: 02/23/2021 15:58:44 Notice Sent To: Ian Thomas Davis, Esq. Ian Davis, Esquire 55 Union St Fourth Floor,		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Boston, MA 02108 Notice Sent To: Shawn Guilderson, Esq. Bristol County District Attorney's Office Fall River Justice Center 186 South Main Street, Fall River, MA 02721		
02/23/2021	The following form was generated: Notice to Appear for Trial on April 26, 2021 at 9:00 a.m. in CR8 Sent On: 02/23/2021 15:59:33 Notice Sent To: Ian Thomas Davis, Esq. Ian Davis, Esquire 55 Union St Fourth Floor, Boston, MA 02108 Notice Sent To: Shawn Guilderson, Esq. Bristol County District Attorney's Office Fall River Justice Center 186 South Main Street, Fall River, MA 02721		
03/14/2021	Event Result:: Jury Trial scheduled on: 04/26/2021 09:00 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. Raffi N Yessayan, Presiding Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
03/14/2021	Scheduled: Judge: Cosgrove, Hon. Robert C Event: Jury Trial Date: 04/26/2021 Time: 09:00 AM Result: Rescheduled		
03/14/2021	Event Result:: Final Pre-Trial Conference scheduled on: 04/16/2021 09:00 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. Raffi N Yessayan, Presiding Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
03/30/2021	Event Result:: Final Pre-Trial Conference scheduled on: 04/16/2021 09:00 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. Raffi N Yessayan, Presiding Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
04/07/2021	Defendant 's Motion for Release on Bail from Pretrial Detention, with accompanying affidavit in support thereof	12	Image
04/08/2021	Opposition to Defendant's Request to Reopen the 58A Hearing, Vacate the Detention, and Release the Defendant on Bail filed by Bristol County District Attorney	13	Image
04/15/2021	Event Result:: Bail Hearing scheduled on: 04/16/2021 02:00 PM Has been: Rescheduled For the following reason: Transferred to another session Hon. Raffi N Yessayan, Presiding Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
04/15/2021	Event Result:: Bail Hearing scheduled on: 04/16/2021 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Mark A Ferriera, Presiding Staff: Mark A Ferriera, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter		
04/15/2021			

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Event Result:: Jury Trial scheduled on: 04/26/2021 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Mark A Ferriera, Presiding Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
04/15/2021	Event Result:: Final Pre-Trial Conference scheduled on: 04/16/2021 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Mark A Ferriera, Presiding Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
04/15/2021	Event Result:: Bail Hearing scheduled on: 04/16/2021 02:00 PM Has been: Rescheduled For the following reason: Request of Defendant Mark A Ferriera, Presiding Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
04/15/2021	Scheduled: Judge: Cosgrove, Hon. Robert C Event: Jury Trial Date: 06/07/2021 Time: 09:00 AM Result: Rescheduled		
04/21/2021	Pro Se Defendant 's Request for copy of his docket sheet. Mailed to defendant this day at the NBHOC.	14	Image
04/26/2021	Event Result:: Bail Hearing scheduled on: 04/26/2021 02:00 PM Has been: Held as Scheduled Hon. Raffi N Yessayan, Presiding Appeared: Prosecutor Shawn Guilderson, Esq., Defendant Daniel M Brum Ian Thomas Davis, Esq., Private Counsel Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
04/26/2021	Event Result:: Jury Trial scheduled on: 06/07/2021 09:00 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Raffi N Yessayan, Presiding Staff: Aaron T Strojny, Assistant Clerk Magistrate Digital Recording Device Bris CR4, Court Reporter		
04/26/2021	Scheduled: Judge: Cosgrove, Hon. Robert C Event: Jury Trial Date: 06/14/2021 Time: 09:00 AM Result: Rescheduled		
05/10/2021	Endorsement on Motion for Release on Bail from Pretrial Detention, (#12.0): Motion DENIED for the reasons stated in the Commonwealth's opposition. Judge: Yessayan, Hon. Raffi N		Image
05/11/2021			

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	The following form was generated: A Clerk's Notice regarding Paper #12 was generated and sent to: Defendant, Attorney: Ian Thomas Davis, Esq. Ian Davis, Esquire 55 Union St Fourth Floor, Boston, MA 02108 Prosecutor, Attorney: Shawn Guilderson, Esq. Bristol County District Attorney's Office Fall River Justice Center 186 South Main Street, Fall River, MA 02721		
05/14/2021	Event Result:: Final Pre-Trial Conference scheduled on: 05/24/2021 09:00 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. Thomas J Perrino, Presiding Staff: Mark A Ferriera, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter		
05/20/2021	Event Result:: Final Pre-Trial Conference scheduled on: 05/24/2021 09:00 AM Has been: Rescheduled For the following reason: Request of Commonwealth Hon. Robert C Cosgrove, Presiding Staff: Aaron T Strojny, Assistant Clerk Magistrate Digital Recording Device Bris CR4, Court Reporter		
05/20/2021	Commonwealth 's Motion in Limine to Allow Excited Utterances to be Admitted at Trial	15	Image
05/20/2021	Commonwealth 's Motion in Limine: Identification Witness	16	Image
05/20/2021	Commonwealth 's Motion in Limine: Business Records	17	Image
05/20/2021	Commonwealth 's Notice of Intent to Admit Victim's Medical Records at Trial Under Rule 79G	18	Image
05/20/2021	General correspondence regarding request for any and all documents in case file, received from the defendant.	19	Image
06/01/2021	Pro Se Defendant 's Motion to Request for Speedy Trial	20	Image
06/01/2021	Other Records received from Enterprise	21	
06/02/2021	Defendant 's Motion in limine to Exclude Inconclusive DNA Results	22	Image
06/02/2021	Defendant 's Motion in limine to Exclude Non-expert Opinion Testimony by Shyla Bizarro	23	Image
06/02/2021	Defendant 's Motion in limine to Introduce Evidence of a Pending Criminal Case of Shyla Bizarro	24	Image
06/02/2021	Defendant 's Motion in Opposition to the Commonwealth's Motion to Admit Out-Of-Court Statements as Evidence as Spontaneous Utterances	25	Image
06/03/2021	Event Result:: Hearing on Motion(s) in Limine scheduled on: 06/03/2021 09:30 AM Has been: Held-- Under Advisement Hon. Robert C Cosgrove, Presiding Staff: Aaron T Strojny, Assistant Clerk Magistrate Digital Recording Device Bris CR4, Court Reporter		
06/03/2021	Event Result:: Final Pre-Trial Conference scheduled on: 06/03/2021 09:00 AM Has been: Held as Scheduled Hon. Robert C Cosgrove, Presiding Staff: Aaron T Strojny, Assistant Clerk Magistrate Digital Recording Device Bris CR4, Court Reporter		
06/03/2021	Commonwealth 's Submission of Answer to the Judge's Request for Cases on Tests for Blood	26	Image
06/03/2021			Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Endorsement on Motion in Limine: Business Records, (#17.0): Unopposed and ALLOWED. Judge: Cosgrove, Hon. Robert C		
06/07/2021	Endorsement on Motion in Limine to Allow Excited Utterances to be Admitted at Trial, (#15.0): Reserved for trial. Judge: Cosgrove, Hon. Robert C		Image
06/07/2021	Endorsement on Motion in Limine: Identification Witness, (#16.0): See Ruling on Paper #23. Judge: Cosgrove, Hon. Robert C		Image
06/07/2021	Endorsement on Motion in Limine to Exclude Non-Expert Opinion Testimony by Shyla Bizarro, (#23.0): DENIED The Court has viewed the videos. While they are of good quality, the subjects seen in the video are a good distance from the camera. It would appear to the Court that the identification testimony of one with some familiarity with the defendant would be helpful to the jury. See Comm. v. Vacher, 469 Mass. 425, 441 (2014), quoting Comm. v. Pleas, 49 Mass. App. Ct. 321, 326-37 (2000). Judge: Cosgrove, Hon. Robert C		Image
06/07/2021	Endorsement on Motion in Limine to Introduce Evidence of a Pending Criminal Case of Shyla Bizarro, (#24.0): ALLOWED Judge: Cosgrove, Hon. Robert C		Image
06/07/2021	Endorsement on Motion in Opposition to the Commonwealth's Motion to Admit Out-of-Court Statements as Evidence as Spontaneous Utterances, (#25.0): Reserved for trial. Judge: Cosgrove, Hon. Robert C		Image
06/07/2021	List of exhibits on Motion in Limine (pleading #23)	26.1	Image
06/08/2021	The following form was generated: A Clerk's Notice regarding Paper #15 was generated and sent to: Defendant, Attorney: Ian Thomas Davis, Esq. Ian Davis, Esquire 55 Union St Fourth Floor, Boston, MA 02108 Prosecutor, Attorney: Shawn Guilderson, Esq. Bristol County District Attorney's Office Fall River Justice Center 186 South Main Street, Fall River, MA 02721		
06/08/2021	The following form was generated: A Clerk's Notice regarding Paper #16 was generated and sent to: Defendant, Attorney: Ian Thomas Davis, Esq. Ian Davis, Esquire 55 Union St Fourth Floor, Boston, MA 02108 Prosecutor, Attorney: Shawn Guilderson, Esq. Bristol County District Attorney's Office Fall River Justice Center 186 South Main Street, Fall River, MA 02721		
06/08/2021	The following form was generated: A Clerk's Notice regarding Paper #17 was generated and sent to: Defendant, Attorney: Ian Thomas Davis, Esq. Ian Davis, Esquire 55 Union St Fourth Floor, Boston, MA 02108 Prosecutor, Attorney: Shawn Guilderson, Esq. Bristol County District Attorney's Office Fall River Justice Center 186 South Main Street, Fall River, MA 02721		
06/08/2021	The following form was generated: A Clerk's Notice regarding Paper #23 was generated and sent to: Defendant, Attorney: Ian Thomas Davis, Esq. Ian Davis, Esquire 55 Union St Fourth Floor, Boston, MA 02108 Prosecutor, Attorney: Shawn Guilderson, Esq. Bristol County District Attorney's Office Fall River Justice Center 186 South Main Street, Fall River, MA 02721		
06/08/2021	The following form was generated: A Clerk's Notice regarding Paper #24 was generated and sent to:		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Defendant, Attorney: Ian Thomas Davis, Esq. Ian Davis, Esquire 55 Union St Fourth Floor, Boston, MA 02108 Prosecutor, Attorney: Shawn Guilderson, Esq. Bristol County District Attorney's Office Fall River Justice Center 186 South Main Street, Fall River, MA 02721		
06/08/2021	The following form was generated: A Clerk's Notice regarding Paper #25 was generated and sent to: Defendant, Attorney: Ian Thomas Davis, Esq. Ian Davis, Esquire 55 Union St Fourth Floor, Boston, MA 02108 Prosecutor, Attorney: Shawn Guilderson, Esq. Bristol County District Attorney's Office Fall River Justice Center 186 South Main Street, Fall River, MA 02721		
06/08/2021	Findings of Fact and Rulings of Law: on Motion in Limine to Exclude Inconclusive DNA Results Judge: Cosgrove, Hon. Robert C	27	Image
06/09/2021	Event Result:: Jury Trial scheduled on: 06/14/2021 09:00 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Robert C Cosgrove, Presiding Staff: Aaron T Strojny, Assistant Clerk Magistrate Digital Recording Device Bris CR4, Court Reporter		
06/09/2021	Scheduled: Judge: Cosgrove, Hon. Robert C Event: Jury Trial Date: 06/21/2021 Time: 09:00 AM Result: Held as Scheduled		
06/15/2021	Scheduled: Judge: Cosgrove, Hon. Robert C Event: Trial Readiness Conference Date: 06/16/2021 Time: 02:00 PM Result: Held via Video/Teleconference		
06/16/2021	Event Result:: Trial Readiness Conference scheduled on: 06/16/2021 02:00 PM Has been: Held via Video/Teleconference Hon. Robert C Cosgrove, Presiding Staff: Aaron T Strojny, Assistant Clerk Magistrate Digital Recording Device Bris CR4, Court Reporter		
06/22/2021	Event Result:: Jury Trial scheduled on: 06/22/2021 09:00 AM Has been: Held as Scheduled Hon. Robert C Cosgrove, Presiding Staff: Aaron T Strojny, Assistant Clerk Magistrate Digital Recording Device Bris CR4, Court Reporter		
06/22/2021	Scheduled: Judge: Cosgrove, Hon. Robert C Event: Jury Trial Date: 06/23/2021 Time: 09:00 AM Result: Held as Scheduled		
06/22/2021	Scheduled: Judge: Cosgrove, Hon. Robert C Event: Jury Trial Date: 06/24/2021 Time: 09:00 AM Result: Held as Scheduled		
06/22/2021	Scheduled: Judge: Cosgrove, Hon. Robert C Event: Jury Trial		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Date: 06/25/2021 Time: 09:00 AM Result: Held as Scheduled		
06/22/2021	Impanelment of jurors on this date Judge: Cosgrove, Hon. Robert C Zoom handheld device used to record general questions to venire.		
06/22/2021	Commonwealth 's Application for Grant of Immunity for Shyla Bizarro, (DOB 11/15/1995) - after hearing, I find that the witness has been called to testify before a Superior Court jury with respect to a case involving an offense listed in G.L. c. 233, s20D, assault & battery with a dangerous weapon, and involved her privilege against self-incrimination. The motion is therefore ALLOWED. The witness was advised of her obligations & rights under the Court's order in open court.	27.1	Image
06/23/2021	Event Result:: Jury Trial scheduled on: 06/23/2021 09:00 AM Has been: Held as Scheduled Hon. Robert C Cosgrove, Presiding Staff: Aaron T Strojny, Assistant Clerk Magistrate Digital Recording Device Bris CR4, Court Reporter		
06/24/2021	Event Result:: Jury Trial scheduled on: 06/24/2021 09:00 AM Has been: Held as Scheduled Hon. Robert C Cosgrove, Presiding Staff: Aaron T Strojny, Assistant Clerk Magistrate Digital Recording Device Bris CR4, Court Reporter		
06/25/2021	Event Result:: Jury Trial scheduled on: 06/25/2021 09:00 AM Has been: Held as Scheduled Hon. Robert C Cosgrove, Presiding Staff: Aaron T Strojny, Assistant Clerk Magistrate Digital Recording Device Bris CR4, Court Reporter		
06/25/2021	Event Result:: Jury Trial scheduled on: 06/28/2021 09:00 AM Has been: Canceled For the following reason: Case Disposed Comments: Verdict Hon. Robert C Cosgrove, Presiding Staff: Aaron T Strojny, Assistant Clerk Magistrate Digital Recording Device Bris CR4, Court Reporter		
06/25/2021	Scheduled: Judge: Cosgrove, Hon. Robert C Event: Jury Trial Date: 06/28/2021 Time: 09:00 AM Result: Canceled		
06/25/2021	Opposition to to the Jury Instructions on Spoliation and Commonwealth Bowden filed by	28	Image
06/25/2021	Defendant 's Motion for a Required Finding on not guilty - Denied after argument	29	Image
06/25/2021	Verdict affirmed, verdict slip filed (Guilty Verdict) Judge: Cosgrove, Hon. Robert C	30	Image
06/25/2021	The defendant\petitioner is committed without bail for the following reason: Per Order of the Court. Return to Court on 6/28/21.	31	Image
06/25/2021		31.1	Image

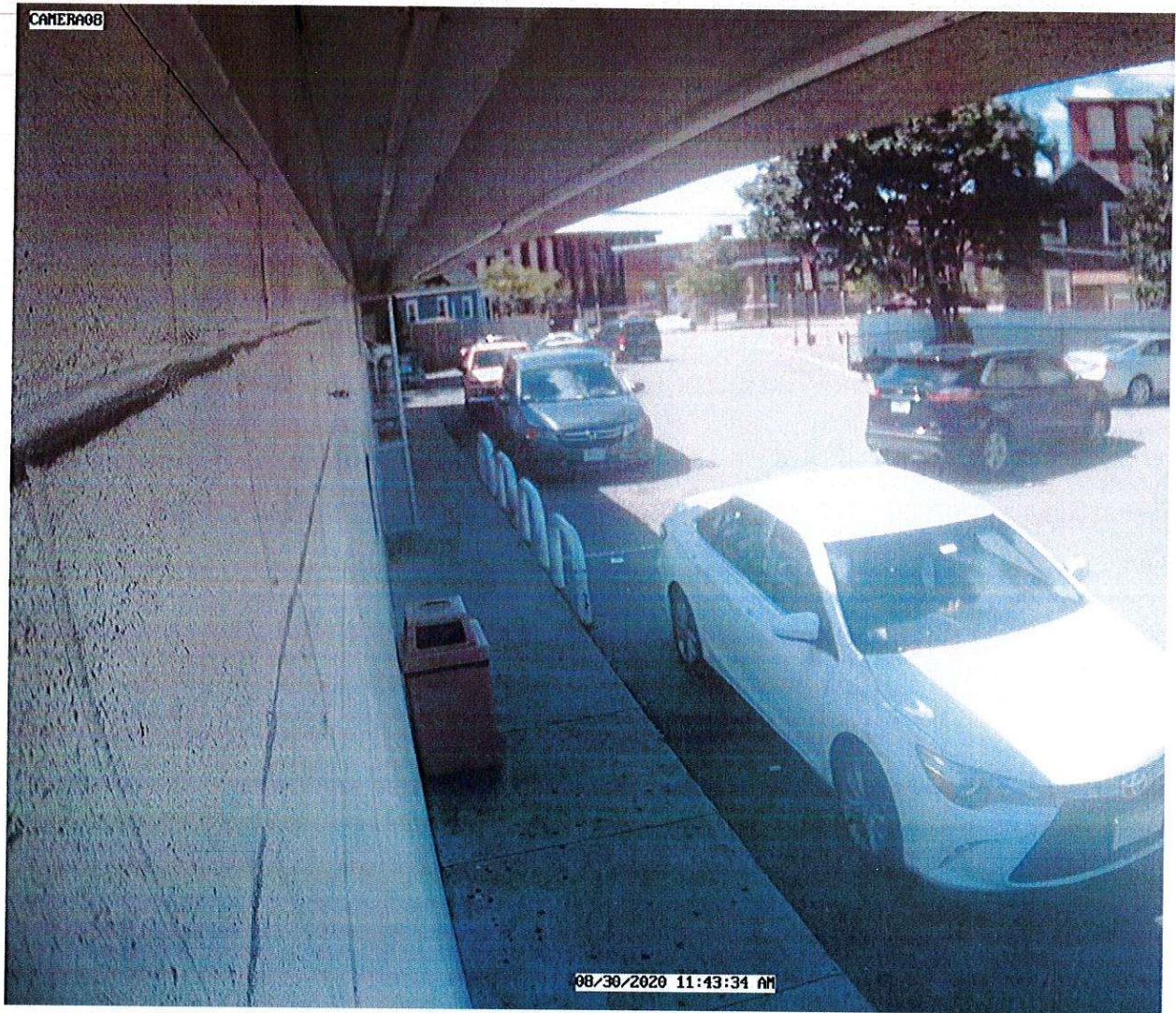
Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	List of exhibits (Trial)		
06/28/2021	Event Result:: Hearing for Sentence Imposition scheduled on: 06/28/2021 09:00 AM Has been: Held as scheduled Hon. Robert C Cosgrove, Presiding Staff: Aaron T Strojny, Assistant Clerk Magistrate Digital Recording Device Bris CR4, Court Reporter 06/28/2021 09:00 AM		
06/28/2021	Commonwealth files sentence recommendation	32	Image
06/28/2021	Defendant files sentence recommendation	33	Image
06/28/2021	Offense Disposition:: Charge #1 A&B WITH DANGEROUS WEAPON c265 §15A(b) On: 06/25/2021 Judge: Hon. Robert C Cosgrove By: Hearing on Plea Offer/Change Guilty Verdict		
06/28/2021	Defendant sentenced:: Sentence Date: 06/28/2021 Judge: Hon. Robert C Cosgrove Charge #: 1 A&B WITH DANGEROUS WEAPON c265 §15A(b) State Prison Sentence Not Less Than: 4 Years, 0 Months, 0 Days Not More Than: 7 Years, 0 Months, 0 Days Committed to MCI - Cedar Junction (at Walpole) Credits 298 Days Financials: Victim/Witness Assessment on felony G.L. c. 258B, § 8. Amount \$90.00		
06/28/2021	Issued on this date: Mittimus for Sentence (All Charges) Sent On: 06/28/2021 11:03:42	34	Image
06/28/2021	Findings and Order of Statutory Fees Judge: Cosgrove, Hon. Robert C	35	Image
06/28/2021	Defendant notified of right of appeal to the Appellate Division of the Superior Court within ten (10) days. Judge: Cosgrove, Hon. Robert C		
06/28/2021	Defendant notified of right of appeal to the Appeals Court within thirty (30) days. Judge: Cosgrove, Hon. Robert C		
06/28/2021	Defendant warned as to submission of DNA G.L. c. 22E, § 3 Judge: Cosgrove, Hon. Robert C		
06/28/2021	Notice of appeal filed of conviction dated 6/25/21; form sent to counsel Applies To: Brum, Daniel M (Defendant)	36	Image
06/28/2021	Other 's Motion to Withdraw and to Appoint Appellate Counsel - Allowed with the understanding that the present counsel will represent the defendant at any appeal of sentence before the Appellate Division. (Atty. Ian Davis) Applies To: Brum, Daniel M (Defendant)	37	Image
06/28/2021	Attorney appearance On this date Ian Thomas Davis, Esq. dismissed/withdrawn as Private Counsel for Defendant Daniel M Brum		
06/28/2021	Attorney appearance On this date Shawn Guilderson, Esq. dismissed/withdrawn for Prosecutor Bristol County District Attorney		
06/28/2021			

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
	Attorney appearance On this date David B Mark, Esq. added as Attorney for the Commonwealth for Prosecutor Bristol County District Attorney		
06/29/2021	General correspondence regarding request for assignment of counsel on appeal sent to CPCS	38	Image

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Disposed by Jury Verdict	06/25/2021	Cosgrove, Hon. Robert C





CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Mass. R. A. P. 11; Mass. R. A. P. 16(a)(13); Mass. R. A. P. 16(e); Mass. R. A. P. 18; Mass. R. A. P. 20; and Mass. R. A. P. 21. The brief is printed in Century Schoolbook font and the Argument Section does not exceed 2,000 words. That section consists of 1,999 words as tallied by the word count function of Microsoft Word.

December 22, 2022

Date

/s/ John P. Warren

John P. Warren

Law Office of John P. Warren

55 Union Street, Fourth Floor

Boston, MA 02108

BBO #685597

(617) 383-4482

john@johnpwarrenlaw.com

CERTIFICATE OF SERVICE

I, John P. Warren, do certify that I served the enclosed Application for Direct Appellate Review electronically upon the Commonwealth through the efilings system, to:

David B. Mark
Office of the District Attorney/Bristol
888 Purchase Street
New Bedford, MA 02740

on this 22nd day of December, 2022.

/s/ John P. Warren
John P. Warren