

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

**SUPREME JUDICIAL
COURT NO.**

**APPEALS COURT
NO. 2025-P-0689**

**COMMONWEALTH,
APPELLEE,**

v.

**JASON A. RENNIE,
DEFENDANT-APPELLANT**

**APPLICATION FOR LEAVE TO OBTAIN FURTHER APPELLATE
REVIEW BY DEFENDANT-APPELLANT JASON A. RENNIE**

The defendant-appellant, Jason A. Rennie ("Mr. Rennie"), through counsel, requests that this Honorable Court grant further appellate review of his 2024 conviction for A&B, Dangerous Weapon, Causing Serious Bodily Injury. Mass. R. App. P. 27.1. In support, Mr. Rennie states that this application is founded upon substantial reasons affecting the interests of justice.

STATEMENT OF PRIOR PROCEEDINGS

On December 23, 2021, a Worcester County grand jury returned one indictment against Mr. Rennie: 001, A&B, Dangerous Weapon, Causing Serious Bodily Injury ("ABDW, SBI"), in violation of G.L. c. 265, §15A(i). A. 6, 21.¹

Mr. Rennie's jury trial (Ritter, J., presiding), commenced on March 20, 2024. A. 6, 17. On March 25, the jury returned a verdict of guilty. A. 18, 34. On March 29, the court sentenced Mr. Rennie to 6-8 years in the state prison. A. 18.

Mr. Rennie filed a timely notice of appeal. A. 19, 35. On April 8, 2026, the Appeals Court affirmed Mr. Rennie's conviction. App. 1-7.

STATEMENT OF THE FACTS

The Appeals Court fairly sets forth in its opinion a brief summary of the evidence presented at Mr. Rennie's trial. App. 1-2. Expanding on that, both Mr. Rennie and the complaining witness, Tyler Ferrara-Zelman ("Mr. Ferrara-Zelman") testified in contrary

¹ References to the record are cited as follows: To the appendix attached hereto, as "App.[page]" to the defendant's record appendix as "A.[page]"; and transcript of the trial as "Tr. [vol./page]".

detail about the fight's key moment, illustrating the Rashomon-like difficulty in determining whether Mr. Rennie's conduct was intentional or reckless:

Mr. Rennie testified that he went to the parking lot, where he observed "multiple groups of people, very belligerent people" and "a bunch of chaos going on". Tr. V/21. As he walked toward his car, through the parking lot, he was "sucker punched", suddenly, unexpectedly "hit in the side of the head." Id. Mr. Rennie did not see who hit him, and "was just trying to gather [his] bearings after being hit", when he was "pushed, pulled, kicked, slapped, and then had multiple people on [him]", Tr. V/22; he was in a headlock, like a "choke-hold" with someone's arms around his neck, and his head "pinned between the chest area and a forearm." Id. At that moment, Mr. Rennie was unable to breathe, his "vision started getting fuzzy, like black and white vision" and was feeling "panic." Id.

Mr. Rennie explained:

In that instance when I realized that I couldn't breathe and there was no escape, I put my hand in my back pocket, pulled out my knife and I swung it over my shoulder.
Tr. V/23.

Mr. Rennie further explained:

As I was in the headlock and struggling to breathe, my only thoughts, panic was setting in. I was trying to get free. I was afraid to black out or lose consciousness. Tr. V/28.

Mr. Rennie did not know if he struck anything with his knife, Tr. V/23, though he was released; and "stumbled away, tried to get [his] bearings, and then walked away from the situation." Tr. V/24.

Mr. Ferrara-Zelman testified that he heard his girlfriend Victoria scream, Tr. IV/159, turned around, and saw a man "pretty entangled with [Victoria], hitting her over the head." Tr. IV/160. Mr. Ferrara-Zelman, feeling "adrenalin" from fighting, Tr. IV/188, "rushed over", "got ahold" of the man and punched him in the head, Tr. IV/160; the man "backed off" and Mr. Ferrara-Zelman returned to his friends. IV/161.

When someone indicated that a person was behind him, Tr. IV/162, Mr. Ferrara-Zelman turned around and saw Mr. Rennie, the same man who, Mr. Ferrara-Zelman testified, had been "hitting Victoria over the head", id.

Mr. Ferrara-Zelman explained that moment:

I don't remember exactly what was said, but we exchanged quick words. He was in a fighting stance. I know he had just gone after Victoria and she was directly behind me so I stood my ground. He had one hand behind or down by his side, his right hand behind his leg, so I was going to let him throw the first punch and he did. Id.

According to Mr. Ferrara-Zelman, Mr. Rennie threw the first punch, with his right hand, straight into his face, the blow landing "on [his] left side", Tr. IV/162-163, where:

My left eye went black. I felt blood rushing down, so immediately I hit him back and jumped on him, kind of a headlock so he wouldn't hit me again. I felt him some impact, right hand hitting me. Tr. IV/163.

Mr. Ferrara-Zelman then wrapped his arm around Rennie's head and neck, pulling him around, punching him in the face, IV/192; and, after he hit Mr. Rennie "one, maybe two times", he bent over from excessive blood loss and dizziness, and separated from Mr. Rennie. Tr. IV/163-164.]

**STATEMENT OF POINT AS TO WHICH
FURTHER APPELLATE REVIEW IS SOUGHT**

The scope of Mr. Rennie's requested review is narrow: Whether the intentional and reckless forms of assault and battery are "closely related subcategories of the same crime" for which "[s]pecific unanimity is not required[,]” Commonwealth v. Mistretta, 84 Mass. App. Ct. 906, 907 (2013); or, whether, based on their different *mens rea* requirements, are elementally different theories of criminal culpability, requiring specific unanimity. See, Commonwealth v. Santos, 440 Mass. 281, 288 (2003); see also, United States v. Tavares, 843 F.3d 1, 12-18 (1st Cir. 2016).

**STATEMENT OF REASONS WHY FURTHER
APPELLATE REVIEW IS APPROPRIATE**

For ten years now, since December of 2016, when the United States Court of Appeals, First Circuit analyzed Massachusetts law and “predicted” that the SJC would not follow Mistretta, see, Tavares, 843 F.3d 1, 12-18; an uncertainty has existed.

With respect; the Massachusetts Supreme Judicial Court must now speak: It is time for the SJC to determine whether the First Circuit's prediction is correct; it is time for the SJC to explain

Massachusetts law and guide the trial courts. This Honorable Court should allow Mr. Rennie's application for further appellate review because it, and not the First Circuit, is the appropriate court to finally determine whether or not in Massachusetts the intentional and reckless forms of assault and battery require specific unanimity.

I. THE INTENTIONAL AND RECKLESS FORMS OF ASSAULT AND BATTERY ARE ELEMENTALLY DIFFERENT, REQUIRING SPECIFIC UNANIMITY

A. A Jury Verdict Must Be Unanimous as to Each of a Crime's Elements.

"[A] jury verdict in a criminal case 'must be unanimous.'" Commonwealth v. Arias, 78 Mass. App. Ct. 429, 432 (2010), quoting, Commonwealth v. Berry, 420 Mass. 95, 111 (1995). See also, Ramos v. Louisiana, 490 U.S. 83, 93 (2020). A unanimous verdict means the jury has agreed that each of a crime's elements has been proven beyond a reasonable doubt. Commonwealth v. Berry, 420 Mass. at 111. See also, Mathis v. United States 579 U.S. 500, 504 (2016). A crime's elements are its necessary factual circumstances, comprising the crime's "constituent parts", and are distinct from other factual circumstances, sometimes referred to as "brute facts" or "means", where the jury need not be

unanimous "in their parsing of the details as to how a crime was committed." Commonwealth v. Santos, 440 Mass. 281, 289 (2003). See also, Mathis v. United States 579 U.S. at 504².

B. Where a Criminal Statute Includes Elementally Different Theories of Culpability, Specific Unanimity Ensures a Unanimous Verdict.

When the Commonwealth prosecutes a single crime using alternate, elementally different theories of culpability, the court provides two protections to ensure a unanimous verdict: A specific unanimity instruction and a special verdict slip. See Commonwealth v. Santos, 440 Mass. at 287 and Commonwealth v. Maynard, 436 Mass. 558, 561 n.2 (2002). See also, Commonwealth v. Berry, 420 Mass. at 112 and Commonwealth v. Accetta, 422 Mass. 642, 645-647 (1996).

² Where the US Supreme Court explained: "'[e]lements' are the 'constituent parts' of a crime's legal definition—the things the 'prosecution must prove to sustain a conviction.'" Black's Law Dictionary 634 (10th ed. 2014). At a trial, they are what the jury must find beyond a reasonable doubt to convict the defendant. . . . [Whereas] [f]acts, by contrast, are mere real-world things—extraneous to the crime's legal requirements. (We have sometimes called them "brute facts" when distinguishing them from elements[.])"

Unanimity protections apply where "the alternate 'theories' are substantively distinct or dissimilar", providing "separate, distinct, and essentially unrelated ways in which the same crime can be committed [,]" Commonwealth v. Santos, 440 Mass. at 288; i.e. where the alternate theories are elementally different. Examples of such "substantively distinct" theories include when a defendant is prosecuted 1) simultaneously for first-degree murder under the theories of deliberate premeditation, extreme atrocity and cruelty and felony-murder, see, Commonwealth v. Berry, 420 Mass. at 110-112; and, 2) simultaneously for voluntary and involuntary manslaughter. See, Commonwealth v. Accetta, 422 Mass. at 645-647. Importantly, in both circumstances where the SJC has required specific unanimity, the alternative theories are distinguished by a different culpable mental state. See, Commonwealth v. Santos, 440 Mass. At 287-289; see also, United States v. Tavares, 843 F.3d at 16 ("[t]he Santos opinion concluded that voluntary and involuntary manslaughter were not closely related because of their different *mens rea* requirements.").

By contrast, unanimity protections do not apply to merely "related and overlapping subcategories of a single element," Commonwealth v. Santos, 440 Mass. at 286, that constitute "equivalent types of conduct," Id. at 289; such as when a defendant is prosecuted under both the attempted battery and threatened battery methods of assault. See, Commonwealth v. Porro, 458 Mass. 526, 533-534 (2010) (explaining that attempted and threatened battery are "closely related" because both are a lesser included offense of *intentional* assault and battery, sharing a nearly indistinguishable mental state)³; thus:

a jury may find a defendant guilty of assault if some jurors find the defendant committed an attempted battery (because they are convinced the defendant *intended* to strike the victim and missed) and the remainder find that he committed a threatened battery (because they are convinced that the defendant *intended* to frighten the victim by threatening an assault). Id.

³ Porro further indicated that its unanimity analysis is limited to intentional assault and battery and does not decide "whether either of the two theories of assault is a lesser included offense of reckless assault and battery." Id. at 534 n. 8.

C. The Intentional and Reckless Forms of Assault and Battery are Elementary Different Theories of Culpability, Based on Different Mental States.

G.L. c. 265, §15A(b), Assault and Battery By

Means of a Dangerous Weapon ("ABDW") provides that:

Whoever commits an assault and battery upon another by means of a dangerous weapon shall be punished by imprisonment in the state prison for not more than ten years or by fine of not more than one thousand dollars or imprisonment in jail for not more than two and one-half years.

Massachusetts "common law recognizes two separate aspects to the crime of assault and battery[,]" intentional and reckless, Commonwealth v. Burno, 396 Mass. 622, 625 (1986): A conviction for intentional ABDW requires "the intentional and unjustified use of force upon another, however slight", Id., while, alternatively, reckless ABDW requires "the intentional commission of a wanton or reckless act (something more than gross negligence) causing physical or bodily injury to another." Id.

Each "aspect" (or theory) requires a different culpable mental state, and different result. Intentional ABDW describes a heightened *mens rea*, intentionality, but a lesser result, slight contact; whereas, for reckless ABDW, there is no actual intent

present to commit an assault and battery, generally, or to batter specifically, but conviction requires the greater result of "causing physical or bodily injury." See, Commonwealth v. Stratton, 114 Mass. 303, 305 (1873), Commonwealth v. Welansky, 316 Mass. 383, 399 (1944) and Commonwealth v. Welch, 16 Mass. App. Ct. 271, 275-276 & n.5 (1983).

§15A(b)'s greater/lesser result requirement provides a logical framework for the single statute, proscribing the same punishment, to include greater/lesser theories of culpability. However, irrespective of the result, due to the contrary intent components, intentional versus inferred, the two theories of assault and battery are neither "related and overlapping subcategories of a single element," Commonwealth v. Santos, 440 Mass. at 286, nor "equivalent types of conduct," id. at 289. Simply put, it just doesn't follow that 1) an intent to batter under an intentional theory of assault and battery; and 2) the legal equivalent of reckless "intent," an intentional act absent an intent to batter, are closely related merely "overlapping subcategories" of intent, see, id. at 286, rather than "separate,

distinct, and essentially unrelated ways" in which the defendant could commit the same crime. Id. at 287-288.

The contrary intent components spotlight general unanimity's problem for ABDW, where, after conviction, a trial judge must appropriately assess a defendant's culpability, and therefrom craft a just sentence, without a jury determination about whether the conduct at issue was intentional (more culpable, the greater sentence) or reckless (less culpable, the lesser sentence). Cf. Commonwealth v. Porro, 458 Mass. at 533-534, where, because the attempted and threatened forms of assault are both a lesser included offense of an intentional assault and battery, with nearly identical mental states, there is no such distinction.

D.G.L. c. 265, §15A(b)(i) is the Better Statute to Decide that the Intentional and Reckless Forms of Assault and Battery are Elementary Different Theories of Culpability, Based on Their Different Mental States.

For Mr. Rennie, G.L. c. 265, §15A(b)(i), Assault and Battery By Means of a Dangerous Weapon Causing Serious Bodily Injury ("ABDW, SBI") provides that:

(c) Whoever:

(i) by means of a dangerous weapon, commits an assault and battery upon another and by such assault and battery causes serious bodily injury;

shall be punished by imprisonment in the state prison for not more than 15 years or in the house of correction for not more than 2 ½ years, or by a fine of not more than \$10,000, or by both such fine and imprisonment.

By structure, §15A(b)(i) includes both the intentional and reckless theories of assault and battery, absent any greater/lesser result distinction; both theories require a serious bodily injury.

§15A(b)(i) is thus a simpler statutory vehicle to hold that the intentional and reckless theories of assault and battery are elementally distinct, based on their different, irreconcilable mens rea requirements.

CONCLUSION

WHEREFORE, for the foregoing reasons, this Honorable Court should ALLOW this application for further appellate review where Mr. Rennie has raised substantial reasons affecting the interests of justice.

Respectfully submitted,
JASON RENNIE
By his attorney,

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APPENDIX

APPEALS COURT MEMORANDUM
AND ORDER PURSUANT TO RULE 23

COMMONWEALTH v. JASON RENNIE

25-P-689

SUPERIOR COURT DEPARTMENT
WORCESTER COUNTY

Commonwealth of Massachusetts

Appeals Court for the Commonwealth

At Boston

In the case no. 25-P-689

COMMONWEALTH

vs.

JASON A. RENNIE.

Pending in the Superior

Court for the County of Worcester

Ordered, that the following entry be made on the docket:

Judgment affirmed.

By the Court,

Paul Little, Clerk

Date April 8, 2026.

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

25-P-689

COMMONWEALTH

vs.

JASON A. RENNIE.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

A Superior Court jury convicted the defendant of assault and battery by means of a dangerous weapon (ABDW) causing serious bodily injury. On appeal the defendant argues that the trial judge erred by failing to give a specific unanimity instruction requiring the jury to specify whether the defendant was guilty of the intentional or reckless form of assault and battery. We affirm.

Background. The jury could have found the following facts. The defendant's conviction arose from a fight that occurred in a parking lot outside a Worcester bar in the early morning hours of September 12, 2021. The fight began when the defendant grabbed the victim's girlfriend, and the victim rushed over to

help. The victim hit the defendant, causing the defendant to back off, but he returned a few seconds later and punched the victim in the face. Somebody yelled "knife." The victim, who was bleeding heavily from his left eye, put the defendant in a headlock. The defendant then began making "thrusting" motions toward the victim's abdomen, using what appeared to be a weapon. After the two men broke apart, the defendant fled and was eventually apprehended by police a couple hundred yards away. The defendant had a knife in his back pocket, and the police also recovered two similar-looking knives in the parking lot. The victim suffered severe injuries and even after three surgeries could not "make out any shapes" with his left eye.

The defendant testified in his own defense that the victim "sucker punched" him and then put him in a headlock. The defendant started panicking because he could not breathe. Unable to escape, the defendant pulled out a knife from the set that he normally carried with him and "swung it over [his] shoulder." He did not know if he hit anything.

Discussion. At the charge conference, the defendant requested that the judge instruct the jury that they could find the defendant guilty only if they were unanimous as to the form of assault and battery, intentional or reckless, underlying their verdict. The judge denied the request, relying on Commonwealth v. Mistretta, 84 Mass. App. Ct. 906 (2013), among

other authorities. The judge then instructed the jury on both intentional and reckless assault and battery and gave a general unanimity instruction.

In Mistretta, 84 Mass. App. Ct. at 907, we held that the intentional and reckless forms of assault and battery are "closely related subcategories of the same crime" for which "[s]pecific unanimity is not required." We reasoned that "[i]n the case of reckless assault and battery, actual intent to commit the crime is not present, but its equivalent is established by the nature of the act (the act, itself, must be intentional, and its character wanton and reckless) and its results (there must be actual physical injury, and not simply unconsented-to touching)." Id. We therefore concluded that the judge did not err in declining to give a specific unanimity instruction because the two forms of assault and battery "are not 'separate, distinct, and essentially unrelated ways in which the same crime can be committed.'" Id., quoting Commonwealth v. Santos, 440 Mass. 281, 288 (2003).

While not contesting that Mistretta is controlling, the defendant implicitly asks us to overrule it for the reasons stated by the United States Court of Appeals for the First Circuit in United States v. Tavares, 843 F.3d 1 (1st Cir. 2016). The question in Tavares was whether the Massachusetts offense of ABDW is a crime of violence for purposes of the career offender

provision of the Federal sentencing guidelines. See id. at 8-9. That question in turn depended on whether the offense of ABDW is "elementally divisible into multiple offenses." Id. at 12. In that context the First Circuit expressed its view that Mistretta was wrongly decided because the two forms of assault and battery "differ in that one requires intent while the other requires recklessness." Id. at 16.

We decline the defendant's invitation to adopt the First Circuit's reasoning in Tavares and overrule Mistretta. We are of course not bound by a decision of a Federal court on a question of State law. Indeed, although Tavares was decided nearly a decade ago, we have since continued to follow Mistretta in a number of unpublished decisions issued under our former rule 1:28 and current rule 23.0 and in at least one published decision. See Commonwealth v. Louis, 94 Mass. App. Ct. 404, 407 n.1 (2018), citing Mistretta, 84 Mass. App. Ct. at 907 ("Because we find sufficient evidence to support the conviction of assault and battery by means of a dangerous weapon under a recklessness theory, we need not consider whether there was sufficient evidence to support the conviction under a theory of intentional assault and battery"). See also Commonwealth v. Wentworth, 482 Mass. 664, 682 (2019) (Gants, C.J., dissenting), citing Mistretta, supra ("if that evidence were deemed sufficient to support a jury instruction for harmful battery, the Commonwealth

would be entitled to jury instructions regarding both harmful battery and offensive battery, and the jury could convict the defendant of assault and battery if some jurors found that the defendant was guilty of harmful battery and others thought that the defendant was guilty of offensive battery").

The defendant has not given us sufficient reason to depart from these cases. Contrary to his suggestion, the fact that two forms of a crime have different mens rea requirements is not dispositive of whether a specific unanimity instruction is warranted. For example, in an analogous context, the Supreme Judicial Court has held that attempted battery and threatened battery are closely related ways of committing the same crime such that a jury need not be unanimous as to which was the basis for their verdict. See Commonwealth v. Porro, 458 Mass. 526, 534 (2010). This is so despite the different mens rea requirements underlying the two theories. See id. See also, e.g., Commonwealth v. Zanetti, 454 Mass. 449, 467 (2009) (jury need not be unanimous as to whether defendant is guilty as principal or joint venturer).

The defendant also argues that the intentional and reckless forms of assault and battery are distinct because each requires a different result -- that is, intentional battery requires only a slight touching, whereas reckless battery requires physical injury. See Mistretta, 84 Mass. App. Ct. at 907. While this

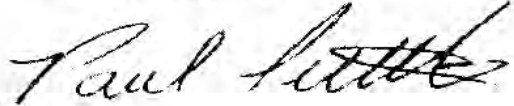
raises an interesting question, it is not one that is implicated by the facts of this case. That is because the charge here was ABDW causing "serious bodily injury," and so the judge instructed the jury that, with respect to both theories of assault and battery, they had to find "bodily injury that results in a permanent disfigurement, loss or impairment of a bodily function, limb or organ or a substantial risk of death." We therefore need not and do not consider the question.

Finally, we are especially disinclined to revisit Mistretta on the facts here because the Commonwealth has a colorable argument that the defendant was not prejudiced by the lack of a specific unanimity instruction, even assuming one was warranted. Although the judge instructed the jury on both forms of assault and battery, the Commonwealth in its opening statement and closing argument presented its case as one of intentional assault and battery, asserting that the defendant intentionally stabbed the victim in the head before being put in the headlock. We are therefore inclined to agree with the Commonwealth that there was little to no potential for jury disagreement.

For these reasons we decline to overrule Mistretta and thus conclude that the judge did not err in denying the defendant's request for a specific unanimity instruction.

Judgment affirmed.

By the Court (Henry, Shin &
Toone, JJ.¹),


Clerk

Entered: April 8, 2026.

¹ The panelists are listed in order of seniority.

CERTIFICATE OF SERVICE

I hereby certify that, on April 29, 2026, I served a true copy of the foregoing upon the Commonwealth by mailing a copy of the same, first-class mail, postage pre-paid, to: Jesse-Paul J. Crane, Assistant District Attorney - Appeals Unit Worcester County District Attorney's Office 225 Main Street, G301 Worcester, MA 01608.


Chris Norris

CERTIFICATE UNDER M.R.A.P. 16(k)

Undersigned counsel certifies that this application complies with the Rules of Court pertaining to the filing of an application for further appellate review. For this application, I used a Courier New font, 12 pt., 10 characters per inch, for 42 non-excluded pages.


Chris Norris