

S.J.C. No. DAR-____
App. Ct. No. 2025-P-1516

Commonwealth of Massachusetts

Supreme Judicial Court

COMMONWEALTH

vs.

JESSE COLON

ON THE DEFENDANT'S APPEAL FROM
THE ROXBURY DIVISION OF THE BOSTON MUNICIPAL COURT

APPLICATION FOR DIRECT APPELLATE REVIEW

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December 19, 2025

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REQUEST FOR DIRECT APPELLATE REVIEW

Jesse Colon was convicted after his midtrial request to represent himself was denied and he was forced to proceed with counsel he had rejected. His appeal presents a novel question of law: whether the fundamental right to self-representation receives more robust protection under art. 12 than the Sixth Amendment. Although many cases have interpreted the right to counsel under art. 12 as more protective than its federal counterpart, it appears no case has limned the contours of the right to self-representation under art. 12.

Under the existing case law, a judge's denial of a midtrial motion for self-representation is reviewed for an abuse of discretion. *Commonwealth v. Miller*, 6 Mass. App. Ct. 959, 960 (1978). But relegating the exercise of the right to self-representation to the wide discretion of a trial judge is insufficient to protect the fundamental constitutional right at stake. Instead, to effectuate the guarantees of art. 12, this Court should require good cause to be shown for the denial of a midtrial invocation of the right to self-representation.

In addition, lower courts need guidance as to the standard used to evaluate a midtrial request for self-representation, particularly where the defendant is not seeking a continuance. In *Commonwealth v. Najjar*, 96 Mass. App. Ct. 569, 578 (2019), the Appeals Court, importing the standard for a midtrial request to change counsel, stated that a midtrial request for self-representation must be

supported by good cause. That is, the Appeals Court has required good cause for a defendant to *exercise* this right, rather than for a judge to deny it. This heightened standard, at least where the defendant is not seeking a continuance, overburdens a defendant's exercise of his right to self-representation.

Pursuant to Mass. R. A. P. 11, Mr. Colon respectfully requests direct appellate review so that this Court may consider the scope of the right to self-representation under art. 12 and clarify how judges should assess midtrial requests for self-representation.

PRIOR PROCEEDINGS

On September 11, 2019, Jesse Colon was charged in the Roxbury Division of the Boston Municipal Court with assault and battery by means of a dangerous weapon, G. L. c. 265, § 15A(b) (R13).¹

The case was tried before a jury (Fiandaca, J., presiding) from August 23, to August 24, 2022 (R11). Mr. Colon was represented by counsel, but after the Commonwealth rested, he made multiple attempts to represent himself (T1:114-123). The requests were denied (T1:118, 122). The jury convicted Mr. Colon

¹ The record appendix is cited as "(R __)". The transcript from the first day of trial, August 23, 2022, is cited as "(T1:___)", and the transcript from the second day of trial, August 24, 2022, is cited as "(T2:___)". The transcript from the August 25, 2022 sentencing hearing is cited as "(T3: ____)". Trial exhibits are cited as "(Exh. __)".

(T2:43-44; R11). After the verdict, defense counsel moved for dismissal or, in the alternative, a mistrial, based on the Commonwealth's failure to disclose surveillance video (T2:46-49; R14-15). The judge denied the motion without prejudice, determining it was properly the subject of a new trial motion (T2:50). Mr. Colon was sentenced to the maximum term of imprisonment: two and one-half years in the house of correction (T3:11; R11). Mr. Colon timely filed a notice of appeal (R11, 14). The case was entered in the Appeals Court on December 10, 2025.

STATEMENT OF FACTS

The Commonwealth's case. On September 7, 2019, Kyle Duarte and his friends, Christopher Rullo and Nicholas Alves, were outside of a 7-Eleven store after a night out in the Seaport (T1:59-60).² The three men had gone to the 7-Eleven to get water and nicotine pods at about 2:30 a.m. (T1:60-61). They encountered Mr. Colon on a bike outside of the store (T1:61). Mr. Duarte thought that Mr. Colon was sleeping (T1:61). Mr. Duarte saw someone going through Mr. Colon's bag and told him what was happening (T1:61). Mr. Colon woke up and began yelling at Mr. Duarte (T1:61). Mr. Alves heard Mr. Colon

² Mr. Duarte and Mr. Alves were both 24 years old at the time of trial (T1:59; 87), making them about 21 years old at the time of the incident. Mr. Colon was 48 years old at the time of the incident (T1:135).

say that “he did 18, he’s not scared to go back” (TI: 89). Mr. Duarte responded that he was trying to help Mr. Colon out and that he didn’t want a confrontation (T1:62). Mr. Duarte’s friend Chris ordered an Uber and the three friends began walking up the street (T1:62).

Mr. Colon followed the three men (T1:62). Mr. Duarte testified that Mr. Colon “was constantly walking up towards me as I was trying to minimize myself from that scenario” (T1:63). Mr. Duarte testified that the physical altercation began when Mr. Colon approached him and wanted to fight (T1:63). Mr. Colon and Mr. Duarte exchanged punches (T1:82). It was raining; the ground was wet and the two men “were slipping and sliding” as they fought (T1:82). Mr. Duarte fell multiple times; one time he fell so hard that he sustained a fracture in his hand (T1:82).

At one point, Mr. Duarte chose to go at Mr. Colon rather than retreat (T1:85). Later, Mr. Colon grabbed him by the shirt and Mr. Duarte felt a hard blow to his head and fell to the ground (T1:63). Mr. Duarte tried to run away but he slipped on the wet ground (T1:63). Eventually he was able to run away and ask someone to call 911 (T1:64). The fight lasted less than one minute (T1:63). Mr. Alves recorded part of the altercation, but did not capture its beginning (T.1:64, 74, 84, 89-90; Exh. 7).

Mr. Duarte did not remember seeing a knife during the fight, nor did he think that he was stabbed at the time (T1:68, 81, 84, 86). Mr. Alves also did not see any objects in Mr. Colon's hands that night (T1:89). Still photos taken from the video show Mr. Colon with a knife in his right hand (T1:66; Exh. 2). Mr. Duarte received a gash above his left eye which required ten stitches, a bruise on his nose, scratches to his face and a broken pinkie finger (T1:69-70, 83; Exh. 4, 5). He was not sure where the bruise on his nose or the scratches on his chin came from, but believed they were the result of one of his falls (T1:82).

Officer Paul Michael Bertocchi of the Boston Police Department responded to a call "for a person stabbed" (T1: 96) and found Mr. Duarte suffering from an "apparent stab wound" to his upper eye area (T1: 96, 98).

Sergeant Matthew Ryan of the Boston Police Department canvassed the area for surveillance video (T1:111). The only business that had video was Amelia's Taqueria on Boylston Street (T1:111). The video was not playable, but it was turned over to the District Attorney's Office (T1:111).

Mr. Colon's request to represent himself. After Sergeant Ryan testified, and outside the presence of the jury, Mr. Colon asked to address the judge (T1:114). He stated, "I don't believe he's representing me to my best of my ability. I don't need your services right now" (T1:114). Mr. Colon explained that he had made many requests of trial counsel, including court appropriate attire

and certain investigative steps (T1:114-115). “I was asking for videotapes, summons -- summons -- serving people. I’ve been asking for a whole lot of things and it’s just getting pushed over” (T1: 115).

The judge responded that he would address those issues at the end of the trial (T1:115). At that point, Mr. Colon made an explicit request for self-representation: “I don’t feel he’s representing me right. I don’t want to use him, you know what I’m saying, to represent me. I’d rather represent myself, you know what I’m saying, right now if that’s the case” (T1:116). In response, the judge thanked him and then asked defense counsel if he planned to call any witnesses (T1:116).

Trial counsel spoke with Mr. Colon privately and then reported to the judge, “So, I’m a -- I’m at a little bit of a loss. Mr. Colon is -- is -- expressed to me his desire that not have me continue to represent him in connection with this case due to shortcomings of preparation and execution of the trial” (T1:118). The court then denied Mr. Colon’s “motion to strike [counsel’s] appearance and to represent himself” (T1:118). The judge stated

We are half -- more than halfway through this trial. You have represented him, from everything that I have seen at this trial, ably and competently throughout, and that the defendant expresses once he’s had a chance to view the Commonwealth’s case, his dissatisfaction with how things are going, would not allow for my granting his motion to strike you as counsel. I’m going to ask that you finish the representation, Mr.

McKinnon, and if the result is adverse to the defendant, the defendant may file whatever post-trial motion he believes is appropriate” (T1:118).

When asked if he intended to testify, Mr. Colon said no (T1:119). Trial counsel informed the judge that he had previously met with Mr. Colon and prepared him to testify (T1:119). Trial counsel stated that he believed Mr. Colon’s current unwillingness to testify was a result of Mr. Colon’s “dissatisfaction with the proceedings today” (T1:119).

When the jury was brought back into the courtroom, Mr. Colon stated, “I would like to take the stand, they’re forcing me to continue with an attorney that I won’t want to work with -- he don’t represent me right -- he’s forcing me -- I’d like to testify” (T1:121).³ The jury was sent out and Mr. Colon stated, “I would like to [testify], but not with this attorney though” (T1:122). He continued, “The only reason to change my status is that I’ve been asking for a videotape and now, miraculously, there’s a videotape that’s there that I can’t have access to. Why can’t I -- what -- what -- I’ve been asking this since day 1. You can bring the officers back in that at my arresting time, I asked for that video” (T1:122). “And the whole time I’ve been being denied and the officer said it right here, that it was there. The whole time it -- the officer said, yeah, there is video” (T1:122-123).

³ For clarity, the judge’s simultaneous speech is not included in this quote.

The trial judge did not address Mr. Colon's complaints, instead he held a charge conference with the lawyers (T1:123). After the judge found that the evidence did not warrant a self-defense instruction (T1:127), the judge allowed trial counsel's request to reopen the evidence and call Mr. Colon as a witness (T1:129).

The defendant's case. Mr. Colon denied stabbing Mr. Duarte (T1:140). Mr. Colon testified that he was homeless and he had nowhere to go on the night of the incident so he stood outside 7-Eleven on his bike (T1:132-133). He ended up falling asleep on his bike (T1:133). He was suffering from a fentanyl addiction at the time, but was managing his addiction with prescription suboxone (T1:133). He was awoken by someone tugging on his bag and, when he lifted his head, he saw a group of men running and laughing, saying, "Stay woke" (T1:134). One of the men, Mr. Alves, turned around and said, "Watch out, they're trying to rob you" (T1:134). Mr. Colon turned around to see if anybody was behind him, but no one was there (T1:134). Mr. Colon told them, "I'm 48. Don't play with me. Go play with your 18-year-old friends somewhere else" (T1:135).

While he was engaged in a verbal argument with Mr. Alves, the other two men ran away but then started coming back toward Mr. Colon (T1:136). As the other men were heading back toward him, Mr. Colon "bluffed like if [he] had a

gun” (T1:136, 146). The men started running and he chased them around the corner (T1:136). Mr. Colon yelled some profanity at them and then headed back toward 7-Eleven (T1:136-137).

Then all three men started running toward him (T1:137). They were aggressive and tried to block Mr. Colon’s path (T1:137). Two of the men were on one side of Mr. Colon and the third man was on the other side (T1:137). Mr. Colon was boxed in between the three men and a bus stop (T1:138-139). At that point, Mr. Colon pulled a knife out of his pocket (T1:138, 147). Mr. Colon testified that he was “in a panic” and scared because he had never been in a situation like that before (T1:149). Mr. Duarte struck first and tried to kick Mr. Colon (T1:139). After that, Mr. Duarte and Mr. Colon traded blows (T1:139, 148). Mr. Colon punched Mr. Duarte while holding the knife, but he never stabbed him (T1:140, 143, 148-149). Mr. Colon testified, “I knew I couldn’t say, time out. Hold on, let me put the knife away, or drop it when there’s two other guys there” (T1:149).

As they fought, both men slipped and fell multiple times (T1:140). Mr. Colon suffered a broken thumb during a fall (T1:140-141). Mr. Colon believed that Mr. Duarte may have been intoxicated because he fell without being struck (T1:140-141).

The closing arguments. In closing, trial counsel focused on two main themes: self-defense (T2:10) and the lack of evidence that a stabbing occurred (T2:8, 9).⁴ He emphasized that Mr. Colon denied ever using the knife to strike Mr. Duarte and that Mr. Duarte never felt a cut or stab (T2:8). Trial counsel stressed that both parties fell during the course of the fight and argued that the Commonwealth failed to prove that Mr. Duarte's injury was the result of a stabbing rather than a fall or punch (T2:9). Mr. Duarte broke his pinkie in a fall and "he also has some kind of laceration on his nose and he also has some sort of mark on his chin. And he was unable to tell you where those marks came from, whether they came from the fall or the fight, he -- he couldn't tell. He doesn't know" (T2:9).

The prosecutor urged the jury to reject self-defense (T2:20) and argued that Mr. Colon's testimony about only punching, not stabbing, Mr. Duarte was not credible (T2:15-17). He argued, "You don't get ten stitches in a straight line, just like that, from a punch. You get it from a blade. Common sense tells you that that knife struck Mr. Duarte and those injuries confirm it" (T2:16).

⁴ The judge found that the evidence warranted a lesser included instruction on simple assault and battery for two reasons: (1) because neither witness saw a weapon in Mr. Colon's hand that night, and (2) "there was evidence deduced that the alleged victim suffered other injuries to his face apparently either from being struck by other than a weapon, or by falling when he was involved in the altercation with Mr. Colon" (T1:127-128).

ISSUES PRESENTED

- I. Self-representation is a fundamental right. Did the trial judge abuse his discretion in denying Mr. Colon's midtrial invocation of the right where Mr. Colon did not seek a continuance and there was no evidence that Mr. Colon's request was intended to disrupt the trial?
- II. Unlike the Sixth Amendment, art. 12 of the Massachusetts Declaration of Rights explicitly guarantees a criminal defendant the right to be "fully heard in his defence by himself." Given the importance of the autonomy interests at stake, should the denial of a midtrial request for self-representation be reviewed for good cause, rather than merely an abuse of discretion?

ARGUMENT

The defendant's request to represent himself should have been allowed because there was no evidence that Mr. Colon's invocation, which arose from a genuine dissatisfaction with counsel, was intended to delay or disrupt the trial.

"[F]orcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so." *Faretta v. California*, 422 U.S. 806, 817 (1975). Even though a pro se defendant "may conduct his own defense ultimately to his own detriment, his choice must be honored out of 'that respect for the individual which is the lifeblood of the law.'" *Id.* at 834, quoting *Illinois v. Allen*, 397 U.S. 337, 350-351 (1970) (Brennan, J., concurring). See *McKaskle v. Wiggins*, 465 U.S. 168, 178 (1984) ("the right to appear *pro se* exists to affirm the accused's individual dignity and autonomy").

The right to represent oneself is a fundamental right secured by art. 12 of the Massachusetts Declaration of Rights, *Commonwealth v. Mott*, 2 Mass. App. Ct. 47, 50 (1974), and the Sixth Amendment to the United States Constitution. *Faretta*, 422 U.S. at 817. Because violations of the right to self-representation are structural, they require automatic reversal. *Commonwealth v. Barbosa*, 99 Mass. App. Ct. 132, 138 (2021).

A. *The denial of Mr. Colon's unequivocal request for self-representation was an abuse of discretion where the invocation was not for an improper purpose and would not have caused a delay in the trial.*

The right to self-representation is “absolute”, *Miller*, 6 Mass. App. Ct. at 960, when there is an unequivocal and timely invocation and “the right is being exercised knowingly and intelligently, and not for an ulterior purpose.” *Mott*, 2 Mass. App. Ct. at 51. The invocation is timely if made prior to the start of the trial, and “[w]hen the right is asserted after the trial has begun, the request is subject to the sound discretion of the trial judge.” *Miller*, 6 Mass. App. Ct. at 960. Here, Mr. Colon’s unequivocal invocation was not for any ulterior purpose, nor would it have delayed or disrupted the trial. As a result, the judge erred in denying Mr. Colon’s request to represent himself.

1. Mr. Colon’s invocation of his right to self-representation was unequivocal.

Mr. Colon made an unequivocal request for self-representation. His explicit request (T1:116), and his persistence in advancing the issue in the face of the judge’s deflections (T1:114-116, 118), constituted an unequivocal invocation. “He expressed a clear desire to dispense with the services of his attorney, and nothing in the record (for the judge made no inquiry to this effect) suggests that he would have been unwilling to make a formal waiver of an attorney.” *Commonwealth v. Chapman*, 8 Mass. App. Ct. 260, 268 (1979).

Nor did Mr. Colon waive the right. Although there was no objection to the denial of the motion, “a defendant need not ‘continually renew his request to represent himself even after it is conclusively denied by the trial court. After a clear denial of the request, a defendant need not make fruitless motions or forego cooperation with defense counsel in order to preserve the issue on appeal.’” *Commonwealth v. Williams*, 85 Mass. App. Ct. 1110, *1 (2014) (unpublished) quoting *Wilson v. Walker*, 204 F.3d 33, 37 (2d Cir. 2000).

2. There was no evidence that Mr. Colon invoked the right for the purpose of disrupting or delaying the trial.

In weighing a midtrial invocation of the right to self-representation, judges “may weigh the inconvenience threatened by defendant’s belated request against the possible prejudice from denial of defendant’s request”, and may take into

account “whether there has been prior disruptive behavior by defendant, whether the trial is in an advanced stage.” *United States v. Dougherty*, 473 F.2d 1113, 1124 (D.C. Cir. 1972), cited in *Miller*, 6 Mass. App. Ct. at 960.

At times, courts have muddied the waters by conflating requests for self-representation with requests to substitute counsel. In *Najjar*, the Court quoted *Commonwealth v. Chavis*, 415 Mass. 703, 712 (1993) for the proposition that when the right to self-representation is invoked during trial, “the judge must weigh ‘the interests of the courts and the public in efficient trial administration’ with ‘a showing of good cause to support the defendant’s motion.’” 96 Mass. App. Ct. at 578. But *Chavis* did not involve an invocation of the right to self-representation. 415 Mass. at 710. Instead, the defendant in *Chavis* moved for new counsel on the day of trial. *Id.*

Of course, if a defendant, like the one in *Chavis*, receives new counsel at or during trial, a continuance is unavoidable as new counsel must be given time to prepare. In those circumstances, “efficient trial administration” is disrupted and it is appropriate to require a showing of good cause to delay the trial. *Id.* at 712.⁵ However, when a defendant seeks to represent himself partway through

⁵ Another example is *Commonwealth v. Drummy*, 67 Mass. App. Ct. 1105 (2006) (unpublished). *Drummy* cited *Commonwealth v. Miskel*, 364 Mass. 783, 791 (1974) for the proposition that a judge addressing a midtrial request to proceed pro se “must balance the defendant’s desire to proceed pro se against the

the trial, that request may or may not involve a request for a continuance. And where, as here, there is no request for a continuance, any concerns regarding delays evaporate. See, e.g., *Chapman v. United States*, 553 F.3d 886, 895 (5th Cir. 1977); *Barbosa*, 99 Mass. App. Ct. at 137 n.13; *Mott*, 2 Mass. App. Ct. at 52.

Here, there was no evidence that Mr. Colon invoked the right to self-representation for an ulterior purpose. *Commonwealth v. Conefrey*, 410 Mass. 1, 12 (1991). Instead, the timing and content of his invocation indicates that he had a sincere dissatisfaction with trial counsel. Mr. Colon repeatedly referenced his request for the video in connection with his request to represent himself (T1:115, 122-123). And he only made that request after Sergeant Ryan testified that the police did obtain video surveillance (T1:111), and after trial counsel took no steps to address the revelation of this undisclosed discovery. Thus, all the evidence suggests that Mr. Colon's invocation of his right to self-representation was prompted by a genuine dissatisfaction with counsel and that he was not motivated by any improper purpose.⁶

public's interest in an efficient and orderly trial." *Id.* at *3. The problem, again, is that *Miskel* addressed a midtrial request to change counsel and postpone the trial, not a midtrial request for self-representation. *Miskel*, 364 Mass. at 792.

⁶ Later, trial counsel confirmed that Mr. Colon had indeed spoken to him about the need to obtain the video (T2:47).

Nor was there any reason to believe that Mr. Colon intended to disrupt the trial. Compare *Chapman*, 553 F.3d at 895 (self-representation erroneously denied where “there is no suggestion that [the defendant] sought to delay or disrupt the trial”) with *Commonwealth v. Glawson*, 445 Mass. 1021, 1021 (2005) (judge terminated self-representation when defendant had “an extensive history of disruptive courtroom behavior”). Here, there is no indication that Mr. Colon had a history of disruptive courtroom behavior, nor had he engaged in any disruptive conduct in this trial.

After his initial concerns regarding counsel’s performance and his request for self-representation were dismissed (T1:115, 116), Mr. Colon did speak directly to the jury, telling them he was being forced to continue with an attorney that he did not want (T1:121). These comments were inappropriate. But because they occurred *after* the erroneous denial of the pro se request, they cannot be used to justify the earlier denial. *Dougherty*, 473 F.2d at 1126 (defendant’s inappropriate comments “concerned assertions of the right to self-representation. It would be anomalous to hold that the denial of one’s rights can be justified by reference to the nature of subsequent complaints protesting that denial”).

In sum, Mr. Colon made an unequivocal request to represent himself, based on a sincere dissatisfaction with counsel rather than an ulterior purpose.

Where there was no request for a continuance and no “prior disruptive behavior” by the defendant, any “inconvenience threatened by defendant’s belated request” was negligible and far too insubstantial to outweigh “the possible prejudice from denial of defendant’s request” to exercise his fundamental right. *Id.* at 1124. Accordingly, under the exiting standard, the judge abused his discretion in refusing to honor Mr. Colon’s request for self-representation.

B. The more expansive protections of art. 12 require a showing a good cause for the denial of a midtrial invocation of the right to self-representation.

Massachusetts has a long tradition of providing greater rights under art. 12 than are guaranteed by the Sixth Amendment. See, e.g., *Commonwealth v. Murphy*, 448 Mass. 452, 465-466 (2007) (right to counsel); *Commonwealth v. Johnson*, 417 Mass. 498, 503 (1994) (right to confrontation); *Commonwealth v. Hodge*, 386 Mass. 165, 168, 169 (1982) (right to conflict-free counsel). Significantly, before the right to self-representation was established under federal law, Massachusetts recognized that “the language of article 12 of the Declaration of Rights is unambiguous as to the existence of the right within the Commonwealth.” *Mott*, 2 Mass. App. Ct. at 50-51

“In deciding whether to interpret art. 12 more expansively” than its federal counterpart, “we look to the text, history, and our prior interpretations

of art. 12.” *Commonwealth v. Mavredakis*, 430 Mass. 848, 858 (2000) (comparing art. 12 to the Fifth Amendment). Here, each of these factors support a more fulsome right of self-representation than that guaranteed by the Sixth Amendment.

As an initial matter, textual differences are not a prerequisite for this Court to adopt broader protections under art. 12. See, e.g., *Goodridge v. Dep’t of Pub. Health*, 440 Mass. 309, 328 (2003). Nonetheless, the textual differences here are striking. The Sixth Amendment does not even mention self-representation, but only guarantees a defendant “the Assistance of Counsel for his defence.” In *Faretta*, the U.S. Supreme Court found that the right to self-representation, “[a]lthough not stated in the [Sixth] Amendment in so many words,” is “implied by the structure of the Amendment.” 422 U.S. at 819.

Article 12, by contrast, explicitly guarantees the right of self-representation: “every subject shall have a right to . . . *be fully heard in his defence by himself*, or his council, at his election” (emphasis added). Indeed, the language of art. 12 suggests that self-representation is the default and counsel is optional. The primacy of self-representation in art. 12 is significant. “It is a standard principle of constitutional interpretation that ‘[a]ll [the] words [of the Constitution] must be presumed to have been chosen advisedly.’” *Mavredakis*, 430 Mass. at 859, quoting *Mount Washington v. Cook*, 288 Mass. 67, 70 (1934).

Accordingly, the text of art. 12, when juxtaposed with the text of the Sixth Amendment, supports a more robust right to self-representation.

The history of art. 12 is also consistent with a broader right to self-representation. “Article 12 and other similar State constitutional provisions evolved from a sense of disapproval of the inquisitorial methods of the Star Chamber and ecclesiastical courts in England.” *Mavredakis*, 430 Mass. at 859. As the *Faretta* Court emphasized, “In the long history of British criminal jurisprudence, there was only one tribunal that ever adopted a practice of forcing counsel upon an unwilling defendant in a criminal proceeding. The tribunal was the Star Chamber.” 422 U.S. at 821. Because forced counsel was a feature unique to the Star Chamber, the fact that the protections of art. 12 arose in response to the unjust practices of that infamous tribunal affirms that art. 12 requires an expansive interpretation of a defendant’s right to self-representation.

Given that the text, history and prior interpretations of art. 12 all militate in favor of a robust right to self-representation, once a defendant on trial makes clear that he no longer “elect[s]” to have counsel represent him, a judge’s denial of that election should not be reviewed merely for an abuse of discretion. Such a denial, which effectively forces the defendant to proceed with counsel he has rejected, should instead be reviewed for good cause to support it.

CONCLUSION

For all the reasons stated above, this Court should allow Mr. Colon's application for Direct Appellate Review.

Respectfully submitted,

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ADDENDUM

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1902CR002953 Commonwealth vs. Colon, Jesse

- Case Type: Criminal
- Case Status: Closed
- File Date: 09/11/2019
- DCM Track:
- Initiating Action: A&B WITH DANGEROUS WEAPON c265 §15A(b)
- Status Date: 08/25/2022
- Case Judge:
- Next Event:

- All Information**
- Party**
- Charge**
- Event**
- Docket**
- Disposition**

Party Information

Colon, Jesse
- Defendant

Alias

- **Party Attorney**
- Attorney
- Rousseve, Esq., Anne
- Bar Code
- 666395
- Address
- Phone Number

[More Party Information](#)

Party Charge Information

- **Colon, Jesse**
- - 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)
- Amended Charge

Charge Disposition

Disposition Date
08/23/2022
Guilty Verdict

Events

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
09/12/2019 09:00 AM	1st (Arraignment) Session		Arraignment		Held - Bail or Conditions of Release ordered

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
09/12/2019 09:00 AM	1st (Arraignment) Session		Default Removal Hearing		Held - Default Removed - CR
10/10/2019 09:00 AM	3rd (Pretrial) Session		Pretrial Hearing		Reschedule of Hearing
10/11/2019 09:00 AM	3rd (Pretrial) Session		Pretrial Hearing		Held-PT
10/25/2019 09:00 AM	3rd (Pretrial) Session		Discovery Compliance & Jury Election		Held
11/08/2019 08:30 AM	3rd (Pretrial) Session		Discovery Compliance & Jury Election		Held
11/18/2019 09:00 AM	3rd (Pretrial) Session		Hearing to Review Status		Review Completed
12/10/2019 09:00 AM	6th Session		Hearing to Review Status		Review Completed
01/30/2020 09:00 AM	6th Session		Hearing to Review Status		Review Completed
03/31/2020 09:00 AM	6th Session		Hearing to Review Status		Rescheduled-Covid-19 emergency
05/21/2020 09:00 AM	6th Session		Hearing to Review Status		Rescheduled-Covid-19 emergency
09/21/2020 09:00 AM	Virtual Court Session		Hearing to Review Status		Rescheduled-Covid-19 emergency
10/28/2020 09:00 AM	Virtual Court Session		Hearing to Review Status		Reschedule of Hearing
12/10/2020 09:00 AM	6th Session		Hearing to Review Status		Rescheduled-Covid-19 emergency
02/26/2021 09:00 AM	6th Session		Hearing to Review Status		Review Completed
05/07/2021 09:00 AM	6th Session		Jury Trial (CR)		Not Held
06/22/2021 02:00 PM	Virtual Court Session		Trial Readiness Conference		Held - JT Assign - Covid - Non-Custody
11/08/2021 12:00 PM	6th Session		Motion Hearing (CR)		Held - Motion allowed
02/17/2022 09:00 AM	6th Session		Jury Trial (CR)		Defendant defaulted-FI to Appear
02/18/2022 09:00 AM	1st (Arraignment) Session		Probation exparte review hear		Held as scheduled.
04/08/2022 09:00 AM	1st (Arraignment) Session		Default Removal Hearing		Held - Default Removed - CR
05/16/2022 09:00 AM	3rd (Pretrial) Session		Pretrial Hearing		Held
05/16/2022 09:00 AM	3rd (Pretrial) Session		Motion Hearing (CR)		Held - Motion allowed
06/03/2022 09:00 AM	1st (Arraignment) Session		Hearing to Review Status		Review Completed
06/03/2022 09:00 AM	3rd (Pretrial) Session		Discovery Compliance & Jury Election		Held
07/01/2022 09:00 AM	6th Session		Jury Trial (CR)		Event Cancelled
07/19/2022 09:00 AM	6th Session		Jury Trial (CR)		Reschedule of Hearing

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event</u>	<u>Judge</u>	<u>Result</u>
08/23/2022 09:00 AM	6th Session		Jury Trial (CR)			Held - Jury Verdict
08/24/2022 08:30 AM	6th Session		Jury Trial (CR)			Held - Jury Verdict
08/25/2022 09:00 AM	6th Session		Jury Trial (CR)			Held - Jury Verdict

<u>Date</u>	<u>Docket</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref</u>	<u>Nbr.</u>	<u>Image Avail.</u>
09/11/2019	Criminal Complaint issued from Electronic Application:	Originating Court: BMC Roxbury Case Number: 1902AC003724-WR Receiving Court: BMC Roxbury				
09/11/2019	Warrant issued:	Straight Warrant issued on 09/11/2019 for Colon, Jesse				
09/12/2019	Served:	Straight Warrant served on 09/12/2019 for Colon, Jesse				
09/12/2019	Appearance filed	On this date Paul A Tomasetti, Esq. added as Appointed - Indigent Defendant for Defendant Jesse Colon			1	
09/12/2019	Appearance filed	On this date Anthony Wane Fugate, Esq. added as Appointed - Indigent Defendant for Defendant Jesse Colon			2	
09/12/2019	Event Resulted: Default Removal Hearing scheduled on:	Appearance filed for the purpose of Case in Chief by Judge Hon. Lisa Grant.				
09/12/2019	Event Resulted: Default Removal Hearing scheduled on:	09/12/2019 09:00 AM Has been: Held - Default Removed - CR Hon. Lisa Grant, Presiding				
09/12/2019	Warrant recalled:	Judge: Grant, Hon. Lisa				
09/12/2019	Event Resulted: Arrangement scheduled on:	09/12/2019 09:00 AM Has been: Held - Bail or Conditions of Release ordered Hon. Lisa Grant, Presiding				
09/12/2019	Defendant arraigned before Court, advised of right to counsel.	Judge: Grant, Hon. Lisa			3	
09/12/2019	Plea of Not Guilty entered on all charges.	Judge: Grant, Hon. Lisa				
09/12/2019	Defendant notified of right to a bail review before the Superior Court (C276 §58).	Judge: Grant, Hon. Lisa				
09/12/2019	Bail revocation warning (276/58) given to the defendant	Judge: Grant, Hon. Lisa				
09/12/2019	Commonwealth's motion to Revoke Defendants Bail/Recognition on (1902CR0044)	FILED, heard & ALLOWED for 60 days until 11/11/19 filed with the following, if any, supporting documents:			4	
09/12/2019	Commonwealth's motion for Protective Order pursuant to Mass. R. Crim P. 14 (a) (6) & MGL ch. 258 s3(h) filed and ALLOWED filed with the following, if any, supporting documents:				5	

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Judge: Grant, Hon. Lisa			
09/12/2019	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$0.00 Bond; \$500.00 Cash), returnable for 10/10/2019 09:00 AM Pretrial Hearing; mittimus issued. Court location of next event (if not your court): Further Orders: Judge: Grant, Hon. Lisa		6	
09/12/2019	Reasons for ordering bail. Judge: Grant, Hon. Lisa Ann		7	 Image
09/12/2019	Appearance filed On this date Paul A Tomasetti, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Jesse Colon		9	
09/23/2019	Defendant's motion for In court show up. filed with the following, if any, supporting documents: certif. of service on opposing party		8	
10/10/2019	Event Resulted: Pretrial Hearing scheduled on: 10/10/2019 09:00 AM Has been: Reschedule of Hearing For the following reason: Defense Counsel Not Present Hon. Michael C Bolden, Presiding			
10/10/2019	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$0.00 Bond; \$500.00 Cash), returnable for 10/11/2019 09:00 AM Pretrial Hearing; mittimus issued. Court location of next event (if not your court): Further Orders: Attorney: Fugate, Esq., Anthony Wane Judge: Bolden, Hon. Michael C Applies To: Colon, Jesse (Defendant)		10	
10/11/2019	Event Resulted: Pretrial Hearing scheduled on: 10/11/2019 09:00 AM Has been: Held-PT Hon. David Weingarten, Presiding			
10/11/2019	Pretrial conference report filed. Judge: Weingarten, Hon. David		11	
10/11/2019	Defendant's presence excused for 10/11/19- offender was in custody Judge: Weingarten, Hon. David			
10/11/2019	Defendant's motion to Be furnished with Criminal records filed and Allowed filed with the following, if any, supporting documents: Judge: Weingarten, Hon. David		12	
10/11/2019	Commonwealth's motion for Court order for production of Medical records- Filed Allowed filed with the following, if any, supporting documents: affidavit in support of motion Judge: Weingarten, Hon. David		13	
10/11/2019	Defendant's motion for exparte approval of funds For an Investigator Filed and Allowed filed with the following, if any, supporting documents: Judge: Weingarten, Hon. David		14	
10/11/2019	Commonwealth's motion for Court Order For EMS Trip Sheets and Patient Care Reports Filed and Allowed filed with the following, if any, supporting documents: supporting brief Judge: Weingarten, Hon. David		15	

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
10/11/2019	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$0.00 Bond; \$500.00 Cash), returnable for 10/25/2019 09:00 AM Discovery Compliance & Jury Election; mittimus issued. Court location of next event (if not your court): Further Orders: Judge: Weingarten, Hon. David		16	
10/17/2019	Boston EMS trip sheets received (19MR313)			
10/25/2019	Event Resulted: Discovery Compliance & Jury Election scheduled on: 10/25/2019 09:00 AM Has been: Held Hon. David B Poole, Presiding			
10/25/2019	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$0.00 Bond; \$500.00 Cash), returnable for 11/08/2019 08:30 AM Discovery Compliance & Jury Election; mittimus issued. Court location of next event (if not your court): Further Orders: Judge: Poole, Hon. David B		17	
11/08/2019	Event Resulted: Discovery Compliance & Jury Election scheduled on: 11/08/2019 08:30 AM Has been: Held Hon. Kenneth J Fiandaca, Presiding			
11/08/2019	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$0.00 Bond; \$500.00 Cash), returnable for 11/18/2019 09:00 AM Hearing to Review Status; mittimus issued. Court location of next event (if not your court): Further Orders: Judge: Fiandaca, Hon. Kenneth J		18	
11/18/2019	Event Resulted: Hearing to Review Status scheduled on: 11/18/2019 09:00 AM Has been: Review Completed For the following reason: Both Parties Request Hon. Kenneth J Fiandaca, Presiding			
12/10/2019	Event Resulted: Hearing to Review Status scheduled on: 12/10/2019 09:00 AM Has been: Review Completed Hon. Kenneth J Fiandaca, Presiding			
01/30/2020	Event Resulted: Hearing to Review Status scheduled on: 01/30/2020 09:00 AM Has been: Review Completed Hon. Debra A DelVecchio, Presiding			
03/23/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Hearing to Review Status scheduled on: 03/31/2020 09:00 AM Has been: Rescheduled-Covid-19 emergency Hon. David Weingarten, Presiding			
05/18/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Hearing to Review Status scheduled on: 05/21/2020 09:00 AM Has been: Rescheduled-Covid-19 emergency For the following reason: COVID Emergency - Submitted-Joint Recommendation Hon. David Weingarten, Presiding			
06/25/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Hearing to Review Status scheduled on: 09/21/2020 09:00 AM Has been: Rescheduled-Covid-19 emergency			

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Hon. David Weingarten, Presiding			
06/25/2020	The following notice was sent: A Court Hearing Notice- Rescheduled Due to Covid 19 was generated and sent to: Defendant: Jesse Colon Defendant: Anthony Wane Fugate, Esq.			
10/28/2020	Event Resulted: Hearing to Review Status scheduled on: 10/28/2020 09:00 AM Has been: Reschedule of Hearing For the following reason: Both Parties Request Hon. Kenneth J Fiandaca, Presiding			
12/10/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Hearing to Review Status scheduled on: 12/10/2020 09:00 AM Has been: Rescheduled-Covid-19 emergency For the following reason: COVID Emergency-Hearing held by video Hon. David Weingarten, Presiding			
02/26/2021	Event Resulted: Hearing to Review Status scheduled on: 02/26/2021 09:00 AM Has been: Review Completed Hon. Debra A DelVecchio, Presiding			
02/26/2021	Event Scheduled Event: Jury Trial (CR) Date: 05/07/2021 Time: 09:00 AM Result: Not Held			
05/07/2021	Event Resulted: Jury Trial (CR) scheduled on: 05/07/2021 09:00 AM Has been: Not Held For the following reason: COVID Emergency - Submitted-Joint Recommendation Hon. Kenneth J Fiandaca, Presiding Appeared: Defendant Anthony Wane Fugate, Esq.- VIA ZOOM , Appointed - Indigent Defendant			
05/07/2021	Defendant's presence excused. Judge: Fiandaca, Hon. Kenneth J			
05/07/2021	Appearance of Commonwealth Attorney's filed Martinelli Judge: Fiandaca, Hon. Kenneth J			
06/22/2021	Case to be assigned to Jury Trial under Covid 19 plan - Defendant not in Custody: Trial Readiness Conference scheduled on: 06/22/2021 02:00 PM Has been: Held - JT Assign - Covid - Non-Custody Hon. Debra A DelVecchio, Presiding			
11/08/2021	Event Resulted: Motion Hearing (CR) scheduled on: 11/08/2021 12:00 PM Has been: Held - Motion allowed Hon. Kenneth J Fiandaca, Presiding			
11/08/2021	Motion to reschedule or continue scheduled court hearing ALLOWED.			
11/08/2021	Event Scheduled Event: Jury Trial (CR) Date: 02/17/2022 Time: 09:00 AM Result: Defendant defaulted-FI to Appear			
02/17/2022	Event Resulted: Jury Trial (CR) scheduled on: 02/17/2022 09:00 AM Has been: Defendant defaulted-FI to Appear Hon. David Weingarten, Presiding			
02/17/2022	Appearance filed On this date Anthony Wane Fugate, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Jesse Colon		27	

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
02/18/2022	Probation Officer's motion for Conditions of Release Violations - Filed by Liz O'Connor, P.O. filed with the following, if any, supporting documents:		19	
02/18/2022	Event Resulted: Probation exparte review hear scheduled on: 02/18/2022 09:00 AM Has been: Held as scheduled. Hon. David Weingarten, Presiding			
04/06/2022	Commonwealth's motion to revise/revoke bail or conditions of release filed with the following, if any, supporting documents: HEARD and ALLOWED in BMC Central Revoked for 60 days until 06/03/2022. Judge: Sinnott, Hon. Richard		20	 Image
04/07/2022	Defendant is ordered committed without bail because DEFENDANT'S BAIL HAS BEEN REVOKED (276 s. 58) to Suffolk County Jail returnable for 04/08/2022 09:00 AM Default Removal Hearing; mittimus issued. Court location of next event (if not this court): Further Orders: ***Bail Revoked until 06/03/22**** Judge: Sinnott, Hon. Richard		21	
04/08/2022	Warrant recalled: Default Warrant cancelled on 04/08/2022 for Colon, Jesse			
04/08/2022	Event Resulted: Default Removal Hearing scheduled on: 04/08/2022 09:00 AM Has been: Held - Default Removed - CR Hon. Steven M Key, Presiding			
04/08/2022	Warrant recalled: Judge: Key, Hon. Steven M			
04/08/2022	Defendant is ordered committed without bail because DEFENDANT'S BAIL HAS BEEN REVOKED (276 s. 58) to Suffolk County Jail returnable for 05/16/2022 09:00 AM Pretrial Hearing; mittimus issued. Court location of next event (if not this court): Further Orders: *****DEFENDANTS BAIL REVOKED UNTIL 6/03/22*****		22	
04/08/2022	Appearance filed On this date Michael A McKinnon, Esq. added as Appointed - Indigent Defendant for Defendant Jesse Colon Appearance filed for the purpose of Case in Chief by Judge Hon. Steven M Key.		28	
05/16/2022	Event Resulted: Pretrial Hearing scheduled on: 05/16/2022 09:00 AM Has been: Held Hon. David J Breen, Presiding			
05/16/2022	Event Resulted: Motion Hearing (CR) scheduled on: 05/16/2022 09:00 AM Has been: Held - Motion allowed Hon. David J Breen, Presiding			
05/16/2022	Defendant is ordered committed without bail because DEFENDANT'S BAIL HAS BEEN REVOKED (276 s. 58) to Suffolk County Jail returnable for 06/03/2022 09:00 AM Hearing to Review Status; mittimus issued. Court location of next event (if not this court): Further Orders: ***Bail Revoked until 06/03/22****		23	
05/16/2022	Defendant's motion for Funds for Investigator filed with the following, if any, supporting documents: ALLOWED		24	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/16/2022	Defendant's motion for criminal records of defendant and/or witness. filed with the following, if any, supporting documents: ALLOWED		25	 Image
05/16/2022	Pretrial conference report filed. Judge: Breen, Hon. David J		26	 Image
06/03/2022	Event Resulted: Hearing to Review Status scheduled on: 06/03/2022 09:00 AM Has been: Review Completed Hon. Kenneth J Fiandaca, Presiding			
06/03/2022	Court orders that prior order of Bail be modified to \$0.00 surety, \$4,500.00 cash. ***500.00 Previously posted**** Judge: Fiandaca, Hon. Kenneth J			
06/03/2022	Event Resulted: Discovery Compliance & Jury Election scheduled on: 06/03/2022 09:00 AM Has been: Held Hon. Kenneth J Fiandaca, Presiding			
06/03/2022	Special Conditions of release in addition to bail or recognizance imposed:Stay away from victim/witness, No Contact with victim/witness Judge: Fiandaca, Hon. Kenneth J			
06/03/2022	Defendant waives 30 day continuance right under C276 s.35. Judge: Fiandaca, Hon. Kenneth J			
06/03/2022	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$0.00 Bond; \$4,000.00 Cash), returnable for 07/01/2022 09:00 AM Jury Trial (CR); mittimus issued. Court location of next event (if not your court): Further Orders:		29	
06/03/2022	Reasons for ordering bail. Judge: Fiandaca, Hon. Kenneth J		30	 Image
06/03/2022	Event Scheduled Event: Jury Trial (CR) Date: 07/01/2022 Time: 09:00 AM Result: Event Cancelled			
06/29/2022	Event Resulted: Jury Trial (CR) scheduled on: 07/01/2022 09:00 AM Has been: Event Cancelled For the following reason: Clerical error Rochelle A Burgos, Presiding			
06/29/2022	Event Scheduled Event: Jury Trial (CR) Date: 07/19/2022 Time: 09:00 AM Result: Reschedule of Hearing			
06/29/2022	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$0.00 Bond; \$4,000.00 Cash), returnable for 07/19/2022 09:00 AM Jury Trial (CR); mittimus issued. Court location of next event (if not your court): Further Orders: ***Cancel Mitt for 07/01/2022. Return date is 07/19/2022*** Judge: Fiandaca, Hon. Kenneth J		31	
07/19/2022	Event Resulted: Jury Trial (CR) scheduled on: 07/19/2022 09:00 AM Has been: Reschedule of Hearing For the following reason: Both Parties Request Hon. David B Poole, Presiding			

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/19/2022	Event Scheduled Event: Jury Trial (CR) Date: 08/23/2022 Time: 09:00 AM			
07/19/2022	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$0.00 Bond; \$4,000.00 Cash), returnable for 08/23/2022 09:00 AM Jury Trial (CR); mittimus issued. Court location of next event (if not your court): Further Orders: Attorney: McKinnon, Esq., Michael A Judge: Poole, Hon. David B		32	
08/23/2022	Event Scheduled Event: Jury Trial (CR) Date: 08/23/2022 Time: 09:00 AM Result: Held - Jury Verdict			
08/23/2022	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$0.00 Bond; \$4,000.00 Cash), returnable for 08/24/2022 08:30 AM Jury Trial (CR); mittimus issued. Court location of next event (if not your court): Further Orders: JURY TRIAL IS IN PROGRESS. PLEASE TRANSPORT THE DEFENDANT BY 8:30 AM Judge: Fiandaca, Hon. Kenneth J		33	
08/23/2022	Event Resulted: Jury Trial (CR) scheduled on: 08/25/2022 09:00 AM 08/23/2022 09:00 AM 08/24/2022 08:30 AM Has been: Held - Jury Verdict Hon. Kenneth J Fiandaca, Presiding			
08/24/2022	Defendant is ordered committed without bail because OTHER REASON: to Suffolk County Jail returnable for 08/25/2022 09:00 AM Jury Trial (CR); mittimus issued. Court location of next event (if not this court): Further Orders: ****PER ORDER OF SITTING JUSTICE PENDING SENTENCING*** Judge: Fiandaca, Hon. Kenneth J		34	
08/25/2022	Notice of appeal to the Appeals Court filed by the Defendant Judge: Fiandaca, Hon. Kenneth J		35	
08/25/2022	Charges Disposed:: Charge # 1 A&B WITH DANGEROUS WEAPON c265 §15A(b) On: 08/23/2022 Judge: Hon. Kenneth J Fiandaca Guilty Verdict			
08/25/2022	All charges disposed - Court ordered fees paid in full Judge: Fiandaca, Hon. Kenneth J			
08/25/2022	Sentence Imposed:: Sentence Date: 08/25/2022 Judge: Hon. Kenneth J Fiandaca Charge #: 1 A&B WITH DANGEROUS WEAPON c265 §15A(b) Committed to HOC Term: 2 Years, 6 Months, 0 Days To Serve: 2 Years, 6 Months, 0 Days Committed to Suffolk House of Correction (South Bay) Credits 203 Days			
01/21/2023	Appearance filed On this date Michael A McKinnon, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Jesse Colon		36	

<u>Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref</u>	<u>Image Avail.</u>
12/01/2023	Appearance filed On this date Anne Rousseve, Esq. added as Appointed - Indigent Defendant for Defendant Jesse Colon		37	
12/11/2025	Notice of assembly of the record sent to the Appeals Court Judge: Johnson, A-C-M Thomas M		38	

Case Disposition	
<u>Disposition</u>	<u>Date</u>
Pending	09/12/2019
Disposed by Jury Verdict	08/25/2022

1 THE COURT: We ready for the jurors?

2 MR. MCKINNON: Yes.

3 THE COURT: Thank you.

4 MR. COLON: Your Honor, may I say something real
5 quick?

6 THE COURT: Hang on -- hang on, chief. Thank you.
7 Mr. McKinnon?

8 MR. MCKINNON: What do you want to say?

9 MR. COLON: I don't believe he's representing me
10 to my best of my ability. I don't need your services
11 right now.

12 THE COURT: So as the tri -- well, I -- I don't
13 know what you're asking me to do, sir. We're in the
14 middle of the trial and --

15 MR. COLON: Yes, I know, but --

16 THE COURT: Okay.

17 MR. COLON: -- I've been asking for little things
18 before, even as simple as a shirt to bring me
19 (Indiscernible 2:05:06) all the way. It's not
20 reflected and I don't think it's the best of my
21 ability. (Indiscernible -- 2:04:13)

22 THE COURT: So -- well, we're -- we're towards the
23 end of the trial and, for the record, you're -- you're
24 dressed appropriately --

25 MR. COLON: No, but that's -- that's -- that's --

1 THE COURT: Okay.

2 MR. COLON: -- that's not --

3 THE COURT: I'm just --

4 MR. COLON: -- I feel like at every turn, you know
5 what I'm saying?

6 THE COURT: Let me -- let me make a record,
7 though, just of -- of an answer to your question and
8 then I'll -- I'll respond to what you said. You --
9 you're wearing a collared shirt and jeans. You -- you
10 don't look like you're -- I -- I mean, there's no in -
11 - indicia --

12 MR. COLON: Well, that's mine. This -- this is my
13 least of my thing.

14 THE COURT: Okay. Okay.

15 MR. COLON: This is least. I was asking for
16 videotapes, summons -- summons -- serving people.
17 I've been asking for a whole lot of things and it's
18 just getting pushed over. Like -- like -- like --
19 like -- like, I can't -- I -- I came to do that this
20 morning, but I decided I'm going to roll the dice on
21 it. And this little, silly old things that -- that I
22 just can't look over. I can't do it. I can't do it,
23 Your Honor.

24 THE COURT: Well, we'll -- we'll address those at
25 the end of the trial. We'll see how far we get, okay?

1 MR. COLON: No, but that's -- I -- I don't want to
2 think myself out of a hole that I'm trying to stop
3 right now from digging out. I -- I don't -- I'm just
4 wanting -- you know what I'm saying, I'm on record. I
5 -- I -- my hands are tied in this situation. I just
6 want to voice my opinion. I don't feel he's
7 representing me right. I don't want to use him, you
8 know what I'm saying, to represent me. I'd rather
9 represent myself, you know what I'm saying, right now
10 if that's the case. You know what I'm saying, if
11 that's the case, you know what I mean. And I -- you
12 know what I mean, I need some --

13 THE COURT: Mr. Colon, I'm -- I --

14 MR. COLON: -- I can't got -- I ain't got that --
15 I ain't got -- I can't do nothing. My hands are tied
16 in this situation, but I'm just want to voice my
17 opinion on it.

18 THE COURT: Okay, sir. Thank you. Mr. McKinnon,
19 are you intending to call any witnesses?

20 MR. MCKINNON: Yes.

21 THE COURT: Okay. And that would be Mr. Colon?

22 MR. MCKINNON: Correct.

23 THE COURT: Okay. We'll proceed and then I'll --
24 I'll hear from Mr. Colon at the conclusion of the
25 trial, if necessary.

1 MR. MCKINNON: Thank you, Your Honor.

2 THE COURT: Thank you. We'll take the jurors,
3 chief. Thank you. You can have a seat, Mr. Colon.
4 We'll wait for the jurors to come out. It'll be a
5 minute or two, thank you.

6 MR. COLON: I'm pleading the Fifth on everything.
7 I'm not doing nothing, man, I'm not going to fold.

8 MR. MCKINNON: Oh, wait. We -- we -- get a
9 second, then --

10 THE COURT: Counsel.

11 MR. MCKINNON: -- speak to Mr. Colon in the back?

12 THE COURT: Sure. Thank you.

13 MR. MCKINNON: Just for a second because --

14 THE COURT: Yeah.

15 MR. MCKINNON: -- if he's going to plead the
16 Fifth, then I can't -- I'm not going to call him.

17 THE COURT: Thank you.

18 MR. MCKINNON: It's -- it's -- in private. You
19 can understand, Your Honor --

20 THE COURT: Of course I do. I'm going to step off
21 and we'll give you a few minutes.

22 THE COURT OFFICER: All rise.

23 (Recess taken; Court resumes at 2:17:08)

24 MR. MCKINNON: Good afternoon, Your Honor.

25 THE COURT: Good afternoon, Mr. McKinnon.

1 THE CLERK: Back on record.

2 MR. MCKINNON: Your --

3 THE COURT: Counsel.

4 MR. MCKINNON: So, I'm a -- I'm at a little bit of
5 a loss. Mr. Colon is -- is -- expressed to me his
6 desire that not have me continue to represent him in
7 connection with this case due to shortcomings of
8 preparation and execution of the trial. And --

9 THE COURT: So -- so let me rule on what I think
10 is the defendant's motion to strike your appearance
11 and to represent himself. That's denied. We are half
12 -- more than halfway through this trial. You have
13 represented him, from everything that I have seen at
14 this trial, ably and competently throughout, and that
15 the defendant expresses once he's had a chance to view
16 the Commonwealth's case, his dissatisfaction with how
17 things are going, would not allow for my granting his
18 motion to strike you as counsel. I'm going to ask
19 that you finish the representation, Mr. McKinnon, and
20 if the result is adverse to the defendant, the
21 defendant may file whatever post-trial motion he
22 believes is appropriate.

23 MR. MCKINNON: Thank you, Your Honor.

24 THE COURT: Thank you. The defendant may be
25 seated at counsel table and is the defendant intending

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Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.

Appeals Court of Massachusetts.

COMMONWEALTH,

v.

William DRUMMY.

No. 05-P-1049.

|

Aug. 31, 2006.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

*1 After a five-day bench trial in February, 2004, the defendant, William P. Drummy, Jr., was found guilty on two complaints of violating an outstanding “no contact” restraining order, contrary to [G.L. c. 209A, § 7](#), and one complaint of attempt to suborn perjury, in violation of [G.L. c. 268, § 3](#).¹ [Tr. 871-872] He appeals, arguing that (1) the judge erred in denying his motion for a required finding of not guilty because, he asserts, he did not enlist or intend his cell mate to call the victim on January 11, 2003; (2) the judge committed reversible error when she denied Drummy's request to proceed pro se after commencement of the trial; and (3) the judge erred in permitting prior bad acts evidence, namely, two May 19, 2002, phone calls he made to the victim, because they were too remote in time from the charged offense. Substantially for the reasons set forth at pages 9 through 22 of the brief for the Commonwealth, we affirm.

Background. We summarize the relevant facts in the light most favorable to the Commonwealth. Drummy dated the victim for nearly two years before she decided to end the relationship in December, 2001. [Tr. 129-130] Drummy thereafter told the victim that he was going to ruin her life and continued to call her, up to twelve times a day. [Tr. 130-131, 135]. On January 31, 2002, Penney obtained a “no contact” restraining order against Drummy.² [Tr. 136]

Drummy nonetheless repeatedly called the victim's house in violation of the restraining order. The Commonwealth was permitted to introduce evidence of two phone calls that Drummy made to her on May 19, 2002. [Tr. 137-138, 140-141] On that day, he called in the early morning hours

and uttered insults and a vulgar obscenity.³ [Tr. 137-138] He also left a sexually explicit message on the answering machine for her daughter later in the day. [Tr. 140-141] On October 4, 2002, the victim received another telephone call from Drummy shortly after midnight. [Tr. 142] She received several additional calls from Drummy that day [Tr. 142-143], including a sexually explicit message left on her answering machine.⁴ [Tr. 239]

On January 11, 2003, at a time when Drummy was in custody for probation violation, the victim received a call from Drummy's cell mate at the Suffolk County house of correction, Eddie Watson. [Tr. 154] Drummy had given Watson a handwritten note containing the victim's name, address, and telephone number. [Tr. 155] Watson called her and warned her that Drummy intended to harm her.⁵ [Tr. 155-156] On March 24, 2003, Drummy himself called the victim twice from the Suffolk County house of Correction.⁶ [Tr. 159-160]

The Commonwealth also presented evidence in its case-in-chief that Drummy had urged his former student, Michael Munichiello, to arrange for third parties to contact the victim.⁷ [Tr. 301-304, 307] Furthermore, there was testimony that Drummy had called an acquaintance, Brian O'Hara, and encouraged him to lie in Drummy's favor at a probation hearing. [Tr. 357-358]

*2 At trial, Drummy presented evidence that he lacked criminal responsibility for violating the restraining order due to mental illness. [Tr. 852-862] He testified that he could not remember having made the October 4, 2002, phone call [Tr. 660] and denied having called the victim on March 24, 2003. [Tr. 682] He further testified that he did not intend for Watson to call her.⁸ [Tr. 751-752]

On the second day of trial, following the direct examination of the victim, Drummy asked the judge to allow him to proceed pro se. [Tr. 190] He purported to have reached a strategic impasse with his counsel as to his defense, specifically as to the role of character evidence. [Tr. 190-192, 217-218] The trial judge noted that the pursuit of character evidence might be inadvisable in light of his defense based on a lack of criminal responsibility [Tr. 191-192] and that a criminal responsibility defense would be difficult for a lay person to present. [Tr. 193] In denying his request, the judge concluded that it was too late in the proceedings for Drummy to continue pro se. [Tr. 227] The judge further observed that Drummy's

request was made immediately prior to the victim's cross-examination and that "an inference ... could be made that he has an ulterior motive for making the request at this time" [Tr. 227] (a motive the Commonwealth argued was to torment her through the cross-examination [Tr. 223]).

Discussion. Required finding of not guilty. Drummy contends that the judge erred in denying his motion for a required finding of not guilty as to the January 11, 2003, violation of G.L. c. 209A, § 7, on the ground that there was insufficient evidence that he had intended that Watson contact the victim. "To establish a violation of G.L. c. 209A, § 7, the Commonwealth must prove that (1) a valid G.L. c. 209A order was entered by a judge; (2) the order was in effect on the date of the alleged violation; (3) the defendant had knowledge of the order; and (4) the defendant violated the order." *Commonwealth v. Habenstreit*, 57 Mass.App.Ct. 785, 786 (2003), citing *Commonwealth v. Delaney*, 425 Mass. 587, 595-597 (1997). See *Commonwealth v. Collier*, 427 Mass. 385, 388 (1998); *Commonwealth v. Silva*, 431 Mass. 401, 403 (2000).

The sole issue here is whether what Drummy did constituted a violation of the no-contact order. The standard language in a G.L. c. 209A restraining order reads, "You are ordered not to contact the plaintiff ... either in person, by telephone, in writing or otherwise, either directly or through someone else...." The word "contact" has been interpreted broadly, *Commonwealth v. Consoli*, 58 Mass.App.Ct. 734, 740-741 (2003), and it is established that prohibited contact includes phone calls made to the victim at a defendant's behest by third parties. *Commonwealth v. Russell*, 46 Mass.App.Ct. 307, 309-310 (1999).

As previously mentioned, Drummy claims that he did not intend for Watson to call the victim. While our cases do not require the Commonwealth to show that the defendant intended to violate the order, *Commonwealth v. Delaney*, 425 Mass. at 596-597; *Commonwealth v. Collier*, 427 Mass. at 389, "[w]here the evidence fairly raises an issue as to the defendant's intent either to direct, or acquiesce in, conduct of a third party, there must be proof that the defendant at least intended the act that resulted in the violation."⁹ *Ibid.* The Commonwealth did present ample evidence establishing that Drummy intended that an intermediary, specifically Watson, contact the victim. Watson testified that Drummy handed Watson a note containing her name, address and telephone number, as well as her daughter's name and age, in order for Watson to call and harass her.¹⁰ [Tr.

155] Michael Munichiello's testimony bolstered the evidence proving Drummy's intent to contact the victim. Munichiello testified that Drummy called him and stated that if third parties contacted Penney "while he was in jail ... that it would get him off the hook." [Tr. 307] The judge, acting as the fact finder, was entitled to discredit Drummy's testimony, particularly as it directly conflicted with that of Watson and Munichiello. See *Commonwealth v. Fitzgerald*, 376 Mass. 402, 411 (1978).

*3 We conclude that the evidence considered in the light most favorable to the Commonwealth was sufficient "to satisfy a rational trier of fact of the essential elements of the crime [violating the no-contact order] beyond a reasonable doubt." *Commonwealth v. Silva*, 431 Mass. at 403, quoting from *Commonwealth v. Coonan*, 428 Mass. 823, 828 (1999). See *Commonwealth v. Latimore*, 378 Mass. 671, 677-678 (1979). The defendant's motion for a required finding of not guilty was, accordingly, properly denied.

Denial of request to proceed pro se. "[T]he right to conduct one's own defense is not wholly unqualified.... [L]imitations placed on the Federal right apply with equal force to the cognate right under the Massachusetts Constitution." *Commonwealth v. Mott*, 2 Mass.App.Ct. 47, 51 (1974). "First, the request ... must be unequivocal ... [s]econd, the request should be asserted before trial ... [t]hird, and perhaps most important, the trial judge should be satisfied that the right is ... not for an ulterior purpose." *Ibid.* Once the request is made, the judge must "conduct some sort of inquiry." *Id.* at 52. However, once a trial has begun, a defendant's right to "discharge his lawyer and to represent himself is sharply curtailed." *Id.* at 51, quoting from *United States ex rel. Maldonado v. Denno*, 348 F.2d 12, 15 (2d Cir.1965).

The decision whether to grant a mid-trial request to proceed pro se is within the broad discretion of the trial judge. *Commonwealth v. Miskel*, 364 Mass. 783, 791-792 (1974). The judge must balance the defendant's desire to proceed pro se against the public's interest in an efficient and orderly trial. *Id.* at 791.

Drummy's pro se request was properly denied. He made it after the trial had considerably advanced and immediately prior to the cross-examination of the victim. [Tr. 215] The judge's denial came after Drummy was permitted to articulate his reason for wanting to proceed pro se. Hence, the judge fulfilled her obligation to conduct "some sort of inquiry." In reaching her decision, the judge expressed justifiable doubt

that a lay person could adequately present a defense based on lack of criminal responsibility. She also voiced concern that the trial had already progressed significantly. Most crucial to our determination, the judge stated that one could infer that Drummy had an ulterior motive in requesting to proceed pro se, as evidenced by the timing of his request (prior to cross-examination of the victim). [Tr. 227] We accord the determination of the judge, who “observed [Drummy’s] demeanor,” *Pike v. Maguire*, 47 Mass.App.Ct. 929, 929 (1999), and heard the explanation for his request, the utmost deference. See *Matsushita Elec. Corp. of America v. Sonus Corp.*, 362 Mass. 246, 254 (1972); *New England Canteen Serv., Inc. v. Ashley*, 372 Mass. 671, 675 (1977). We see no abuse of discretion by the judge in denying Drummy’s belated and suspicious request to proceed pro se.

*4 *Prior bad acts.* Drummy objects to the admission of the May 19, 2002, phone calls that he made to the victim on the ground that they were too remote in time from the charged offense to be probative, rather than unduly prejudicial.¹¹ “Evidence that has relevance to issues other than bad character or criminal propensity is admissible if not outweighed by its unfair prejudice, which is a determination for the judge to make and one which we do not disturb unless, in our judgment, it is palpably wrong.” *Commonwealth v. Pagan*, 440 Mass. 84, 87 (2003), quoting from *Commonwealth v. Fordham*, 417 Mass. 10, 22 (1994). “It is well settled that the prosecution may introduce evidence of a defendant’s prior bad acts, if relevant, to show a common scheme or course of conduct, a pattern of operation, absence of accident or mistake, intent or motive.” *Commonwealth v. Roche*, 44 Mass.App.Ct. 372, 380 (1998).

The May 19, 2002, calls were relevant to demonstrating a common scheme to harass the victim by telephone, as well as illustrative of Drummy’s ongoing hostility toward her.¹² The defendant complains that these “prior bad acts” were more prejudicial than probative because the May calls were “too remote in time to comprise a scheme.” [D. Br. 14] He fails, however, to cite any relevant supporting authority for this conclusory opinion.¹³ His “argument” fails to comply with Mass.R.A.P. 16(a)(4), as amended, 367 Mass. 921 (1975).

The issue of remoteness is within the discretion of the trial judge. See, e.g., *Commonwealth v. Nardone*, 406 Mass. 123, 128 (1989). The calls at issue were not too remote factually to comprise a common scheme, since all of the phone calls were made in violation of the same restraining order. Furthermore, even if it were error to admit the May calls into evidence, the error was harmless. Drummy’s defense was based on lack of criminal responsibility that allegedly existed at least as early as the time of the prior bad act. [Tr. 852-62] We may also assume that the admission of this evidence was not considered by the judge, as fact finder, for any improper propensity purpose, and that the judge properly instructed himself as to the manner in which the competent evidence was to be considered. See *Commonwealth v. Beaulieu*, 3 Mass.App.Ct. 786, 787 (1975).

Judgments affirmed.

All Citations

67 Mass.App.Ct. 1105, 853 N.E.2d 221 (Table), 2006 WL 2520261

Footnotes

- 1 The defendant was also charged with two additional counts of violating the restraining order, but was found not guilty thereon. [Tr. 872]
- 2 The circumstances surrounding the order’s issuance are irrelevant here. There is no dispute that the order was in effect and that Drummy knew of its existence.
- 3 Drummy also called her house ten times on the preceding day, May 18, 2002. [Tr. 139]
- 4 Drummy attempted to disguise his voice “like a black man” on the machine, [Tr. 144], and he referenced “black male genitalia.” [Tr. 731] The victim had recently gone out with a black man. [Tr. 152-153]
- 5 The victim testified that Watson’s phone call was “partly” solicitous. [Tr. 247]
- 6 During the first call, Drummy said “hey.” The victim did not answer Drummy’s second call. [Tr. 161]

- 7 Munichello testified that Drummy viewed this as a tactic to create exculpatory evidence to corroborate his account that he was not responsible for repeatedly contacting her. [Tr. 303-305]
- 8 Drummy testified that Watson took the paper with the victim's name and address from his personal files, and that Watson's call to her was Watson's own idea. [Tr. 751-752]
- 9 The defense argues that "Drummy wanted Watson to deliver [the victim's] phone number and address via a note to some unknown person outside of jail so that person could contact [her]," and not that Watson contact her. [D. Br. 8] Essentially, the defense concedes that Drummy "intended the act" that resulted in the violation. Moreover, even Drummy's version of the facts demonstrates his intent to violate the restraining order, even if she was not contacted in the precise manner that he had envisioned. Compare [Commonwealth v. Habenstreit, 57 Mass.App.Ct. at 787](#) (defendant, ordered to "stay away from [the victim's] workplace," showed up outside of her workplace shouting obscenities and threats on a day when, unbeknownst to him, the victim had called in sick; held, the order was not conditioned on the victim's presence at the workplace, and the fortuitous circumstance of her being sick that day did not provide him with a defense for his conduct, which manifested a knowing violation of the order, even though the violation occurred in a different way than he had intended).
- 10 The fact that Watson warned the victim of Drummy's intentions, as opposed to threatening her, is inconsequential to our analysis. The order specified "no contact," benign, malevolent, or neutral.
- 11 The Commonwealth sought to introduce evidence of two other prior bad acts, but the judge only permitted the May 19, 2002, phone calls to be admitted under the common scheme exception to the prior bad acts rule. [Tr. 59]
- 12 Although intent and common scheme are often articulated as separate grounds for introducing prior bad acts, evidence of a common scheme may be probative of the defendant's intent. See [Commonwealth v. Hanlon, 44 Mass.App.Ct. 810, 817 \(1998\)](#).
- 13 The defendant cites [Commonwealth v. Walker, 442 Mass. 185, 202 \(2004\)](#) in support of his assertion that the calls do not form a sufficient nexus to render the prior bad act admissible. There is, however, no discussion in that opinion that is pertinent to the issue raised here, i.e., whether the time that elapsed between the May 19, 2002, phone calls and the charged offense would render the calls too remote.

85 Mass.App.Ct. 1110

Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.

Appeals Court of Massachusetts.

COMMONWEALTH

v.

Marcus WILLIAMS.

No. 13–P–786.

I

March 28, 2014.

By the Court (TRAINOR, KATZMANN & HANLON, JJ.).

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

*1 The defendant, Marcus Williams, appeals his convictions of assault and battery and disturbing a correctional institution. The defendant argues that his convictions should be reversed because either he was denied his right of self-representation or his trial counsel was ineffective. We reverse.

Discussion. Right to self-representation. A criminal defendant has a constitutional right to represent himself at trial. See *Commonwealth v. Mott*, 2 Mass.App.Ct. 47, 50–51 (1974); *Commonwealth v. Chapman*, 8 Mass.App.Ct. 260, 265 (1979). To exercise this right, a criminal defendant “must assert the right in a timely and unequivocal manner.” *Ibid.* In addition, prior to allowing defendant to proceed pro se, “the trial judge should be satisfied that the right is being exercised knowingly and intelligently, and not for an ulterior purpose.” *Mott*, *supra* at 51. Here, in the context of a colloquy with the judge concerning current trial counsel, the defendant said, “I don’t want someone representing me. I will represent myself.” This statement was made before the jury were empanelled. This was a timely and unequivocal request sufficient to assert his right. See *Chapman*, *supra* (request is timely if it is “made before the start of the empanelling of the jury”). See also *Commonwealth v. Miller*, 6 Mass.App.Ct. 959, 960 (1978) (request is not timely if it is made after the trial starts); *Commonwealth v. Jordan*, 49 Mass.App.Ct. 802, 813 (2000), quoting from *Johnstone v. Kelly*, 808 F.2d 214, 216 n. 2 (2d Cir.1986) (“A request to proceed pro se is not equivocal merely because it is an alternative position, advanced as a fall-

back to a primary request for different counsel”). Further, the judge did not inquire as to whether the defendant understood the dangers of proceeding pro se or whether the defendant was ready for trial that day.¹ Therefore, the denial of the defendant’s request to represent himself cannot have been based on the request being unknowing, unintelligent, or made for an ulterior purpose. See *Mott*, *supra* at 51–52; *Chapman*, *supra* at 265–266, 268.

Finally, although this right can be waived, see *Jordan*, *supra* at 814, quoting from *Wilson v. Walker*, 204 F.3d 33, 37 (2d Cir.2000), the defendant did not waive or abandon his request to represent himself.

“[T]o avoid waiver of a previously invoked right to self-representation, a defendant need not ‘continually renew his request to represent himself even after it is conclusively denied by the trial court. After a clear denial of the request, a defendant need not make fruitless motions or forego cooperation with defense counsel in order to preserve the issue on appeal.’ “

Wilson v. Walker, 204 F.3d at 37, quoting from *Brown v. Wainwright*, 665 F.2d 607, 612 (5th Cir.1982). Here, the judge rejected defense counsel’s motion to withdraw soon after the defendant said he wanted to represent himself. When the defendant attempted to interject, the judge said, “Sir, don’t interrupt me.” The judge then proceeded to consider motions in limine. This was a conclusive denial of his right to represent himself, so the defendant’s future cooperation with counsel and the court did not amount to abandoning his request. Contrast *Jordan*, *supra* (defendant abandoned request by failing to object after judge refused to provide substitute counsel but agreed to appoint co-counsel); *Wilson v. Walker*, 204 F.3d at 38.

*2 Since there was a violation of the defendant’s right to self-representation, we reverse, see *Mott*, *supra* at 52, and do not reach the defendant’s ineffective assistance of counsel argument.

Judgments reversed.

Verdicts set aside.

All Citations

85 Mass.App.Ct. 1110, 5 N.E.3d 968 (Table), 2014 WL 1256100

Footnotes

- 1 The judge only asked if the defendant was familiar with the law and why he was unhappy with his assigned counsel. These are not the necessary inquiries to determine if the defendant is making a knowing and intelligent invocation of his right to self-representation. See [Chapman, 8 Mass App.Ct. at 265](#) (holding it is improper to base denial of defendant's request to represent himself on the facts that trial counsel was prepared and there was no ground for removing counsel).

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CERTIFICATE OF COMPLIANCE

I hereby certify that this application complies with rules 11 and 20 of the Massachusetts Rules of Appellate Procedure. This application is set in 14-point Calisto MT and the argument section contains 1,998 words, as determined through the “Word Count” feature in Microsoft Word 2021.

/s/ Anne Rousseve
Anne Rousseve

CERTIFICATE OF SERVICE

I hereby certify that I have today served the Application for Direct Appellate Review on the Commonwealth by directing a copy to be served through the electronic filing service provider to:

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