

Commonwealth of Massachusetts
Appeals Court

Appeals Court Docket No.: 2026-P-0386

COMMONWEALTH,
Appellee

v.

JONATHAN W. MITCHELL,
Appellants

On Appeal from a Judgment of Conviction after a Conditional Guilty Plea
Following the Denial of a Motion to Suppress

**APPELLANT'S APPLICATION FOR
DIRECT APPELLATE REVIEW**

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I. Introduction

Strict application of a footnote in *Commonwealth v. DeJesus*, 489 Mass. 292 (2022) would prevent suspected dealers charged with possessory offenses based on drugs that were unconstitutionally seized from suspected users from challenging those unconstitutional seizures. Suspected users cannot be charged as codefendants in distribution cases.¹ And the dictum in *DeJesus's* footnote only allows defendants to challenge a seizure from someone “who has been or may be charged with the same possessory offense with which the defendant was charged.” 489 Mass. at 293 n. 2.

Here, the lower court found that police unconstitutionally searched and seized drugs from a suspected drug user based on a hunch not amounting to probable cause that the suspected user had just acquired drugs. But when the Commonwealth charged the appellant Jonathan Mitchell with possessory offenses based on the unconstitutionally seized drugs, Mr. Mitchell was denied the right to challenge that seizure.

¹ See *Commonwealth v. Carrillo*, 483 Mass. 269, 290 (2019); *Commonwealth v. Sepheus*, 468 Mass. 160, 166–167 (2014).

This court should intervene to ensure that the dictum in a footnote in *DeJesus* does not create a loophole that further endangers drug users. The law should not incentivize police to unconstitutionally search and make seizures from suspected drug users knowing that those unconstitutional searches and seizures will be immune from challenge by suspected dealers charged with distribution offenses based on unconstitutionally seized drugs.

II. Request for Direct Appellate Review

Appellant Jonathan Mitchell hereby requests direct appellate review by the Supreme Judicial Court pursuant to Mass. R. App. P. 11.

III. Statement of Prior Proceedings

On December 18, 2023, Mr. Mitchell was arraigned on charges of carrying a firearm without a license, 3rd offense (G.L. c. 269 §10(a) and (d)); possessing a large capacity firearm or feeding device, subsequent offense, 2 counts (G.L. c. 269 §10(m)); possession with intent to distribute cocaine; being a felon in possession of a large capacity firearm (G.L. c. 265, § 18B); possession with intent to distribute and distributing cocaine, subsequent offense, 2 counts (G.L. c. 94C, §32A(d)); and possession of ammunition without an FID card (G.L. c. 269 §10(h)(1)). R.3–5.

On September 18, 2024 Mr. Mitchell filed a motion to suppress; on January 23, 2025 the Commonwealth filed its opposition; on January 23, 2025 the court (Hon. Jeremy C. Bucci) held an evidentiary hearing; on January 24, 2025, the court issued Findings of Fact, Rulings of Law, and an Order denying Mr. Mitchell's Motion to Suppress. On February 13, 2025, Mr. Mitchell filed a motion for reconsideration, which the court denied on February 18, 2025. On March 28, 2025, Mr. Mitchell filed a motion for permission to file a second motion for reconsideration together with the second motion for reconsideration. On April 7, 2025, the court issued an order granting Mr. Mitchell permission to file his second motion for reconsideration, and an order denying on the merits the second motion for reconsideration. R.9-11.

On April 11, 2025, Mr. Mitchell applied for interlocutory review of the trial court's January 24, 2025, February 18, 2025, and April 7, 2025 orders. On April 22, 2025 the Single Justice (Hon. Scott L. Kafker) denied Mr. Mitchell's application for interlocutory review. R.11.

On December 15, 2025, Mr. Mitchell and the Commonwealth filed an agreement for a conditional guilty plea pursuant to Commonwealth v. Gomez and Mass. R. Crim. P. 12 (b)(6) agreeing to Mr. Mitchell reserving his right to appeal the trial court's January 24, 2025, February 18, 2025, and April 7, 2025 orders. The court allowed the agreement, and accepted guilty pleas from Mr. Mitchell to all charges except one of the counts under G.L. c. 269 §10(m), as to which the Commonwealth filed a nolle prosequi. R.12–14.

On January 6, 2026, Mr. Mitchell filed a notice of appeal and on March 20, 2026 this appeal entered in this court. R.14. After his appeal entered in the appeals court, on April 28, 2026 Mr. Mitchell filed his brief.

IV. Statement of Relevant Facts

a. The Trial Court Judge Faces a Thorny Issue of art. 14 Law

On March 28, 2025, the trial court received a second motion requesting reconsideration of a previous order denying a motion to suppress. The second motion for reconsideration raised a difficult issue arising from a recent SJC decision that sought to expand defendants' art. 14 rights. The trial court thus had to decide whether to exercise its discretion to consider the

merits of this issue, thus preserving it for appellate review. See *Commonwealth v. Rodriguez*, 443 Mass. 707, 708 (2005).

The issue stemmed from a loophole left behind by a recent SJC decision. See *Commonwealth v. DeJesus*, 489 Mass. 292, 293 n. 2 (2022). This loophole endangers drug users by removing any incentive against subjecting them to unconstitutional searches as a means to develop evidence against dealers and distributors. A review of the relevant cases illustrates how the string of art. 14 holdings from those cases lead to the *DeJesus* dictum's loophole imperiling the privacy rights of drug users.

In 1990, the SJC had to decide whether to follow the U.S. Supreme Court's "abandonment of the automatic standing rule." *Commonwealth v. Amendola*, 406 Mass. 592, 600 (1990). Since 1960, Fourth Amendment and art. 14 cases had held that a person charged with a possessory offense had "automatic standing" to challenge the constitutionality of the search and seizure producing the contraband that the defendant was charged with having possessed. *Id.* at 596 discussing *Jones v. United States*, 362 U.S. 257 (1960). "In 1980, the United States Supreme Court abandoned the automatic

standing rule.” *Amendola*, 406 Mass. at 598, citing *United States v. Salvucci*, 448 U.S. 83 (1980). Given that the facts in *Amendola* squarely raised the issue, the SJC had to decide what to do as a matter of art. 14 jurisprudence.

The SJC used *Amendola* as the “occasion to announce the adoption of the automatic standing rule under art. 14 of the Massachusetts Declaration of Rights.” *Amendola*, 406 Mass. at 599. The SJC reasoned that “the principal concerns of the *Jones* Court remain valid today, despite the current Supreme Court's shift in thinking.” *Id.* at 600. The SJC held that “[w]hen a defendant is charged with a crime in which possession of the seized evidence at the time of the contested search is an essential element of guilt, the defendant shall be deemed to have standing to contest the legality of the search and the seizure of that evidence.” *Id.* at 601.

While the SJC has in no way, shape, or form sought to limit *Amendola's* retention of the *Jones* rule as a matter for art. 14 jurisprudence, a dictum from *Commonwealth v. DeJesus*, 489 Mass. 292 (2022) threatens to do just that. Reaffirming *Amendola*, *DeJesus* approvingly to cases applying the “automatic standing” rule from *Amendola*. *DeJesus*, 489 Mass. at 297, citing

Commonwealth v. Carter, 424 Mass. 409, 410-411 (1997) and *Commonwealth v. Ware*, 75 Mass. App. Ct. 220, 229-230 (2009). But in articulating the *Jones* rule as preserved by *Amendola*, the SJC in *DeJesus* purports to place an additional limitation on a defendant's ability to challenge the unconstitutional searches and seizures that precipitate distribution charges.

Under *Jones*, *Amendola*, and their progeny, a defendant only had to show that the search or seizure he was challenging produced the contraband the defendant was charged with possessing. But *DeJesus* states that defendants must also show that the person from whom the contraband was seized was a "codefendant," meaning "anyone who has been or may be charged with the same possessory offense with which the defendant was charged." *DeJesus*, 489 Mass. at 293 n. 2. It is very often the case that the actual possessors of the contraband at issue fit this definition, but that is not so where the actual possessor is a drug user.

When a seller is charged with possessing with intent to distribute or with distributing drugs, the user cannot "be charged with the same possessory offense with which the defendant was charged." *DeJesus*, 489

Mass. at 293 n. 2. Distributing charges require evidence that the defendant served as “a link in the chain between supplier and consumer.” *Commonwealth v. Carrillo*, 483 Mass. 269, 290 (2019). And possession with intent to distribute requires proof of distributory intent. *Commonwealth v. Sepheus*, 468 Mass. 160, 166–167 (2014). The facts of *DeJesus* did not raise this issue because the drugs in *DeJesus* were in a basement, not being actually possessed by a user, a codefendant, or anyone else. But the trial court now had before it the question of how the *DeJesus* dictum should apply to an unconstitutional search and seizures of drug user that precipitated distribution charges against the suspected dealer.

b. The Facts of this Case Squarely Present the Thorny Issue the Trial Court was Facing

In deciding whether to grant permission to file a second motion for reconsideration, it would have been clear to the trial court that the facts of this case tee up the threat to drug users created by the *DeJesus* dictum. The drugs in this case were seized after the police stopped a vehicle whose occupant was a suspected drug user that police had a hunch had just purchased drugs from Mr. Mitchell. R.44 (drugs seized from the “floorboard

jam next to the passenger seat” in which suspected drug user was located). And the court had found that probable cause **did not** exist when police stopped the suspected user, and **only arose after** the contraband was seized from the suspected user. R.47 (“Sgt. Hitas did not possess probable cause to stop and arrest the defendant at the conclusion of the suspected drug transaction. . . . [Probable cause only arose after p]olice stopped [the suspected drug user], learned that she admitted to having just bought ‘marijuana’ and then located a small bag of crack cocaine.”).

Given this factual predicate, taking on the issue regarding the *DeJesus* dictum demanded careful attention. Either the trial court would faithfully apply the substance of the rule from *Jones* and *Amendola*, and suppress the contraband seized from the suspected user. Or the trial court would apply the *DeJesus* dictum, which would require it to articulate a principled reason why the violation of a suspected drug user’s art. 14 rights carried no evidentiary consequence even though the violation of a middleman’s art. 14 rights would lead to suppression. It remained to be seen what approach the trial court would take.

c. The Trial Court Decides to take on the Merits of the Thorny art. 14 Issue, but Fails to Adequately Analyze that Issue

On April 7, 2025, the trial court decided to take on the merits of the thorny art. 14 issue presented by the *DeJesus* dictum. Specifically, the trial court issued an order stating that Mr. Mitchell’s “motion for permission to file a second motion to reconsider is granted.” R.61. It thus became the trial court’s task to carefully analyze whether the *DeJesus* dictum’s apparent narrowing of the rule in *Jones* and *Amendola* would prevent Mr. Mitchell from challenging the unconstitutional seizure that precipitated his case.

Falling short of the task at hand, the trial court summarily denied the second motion for reconsideration “for the same reasons stated in the January 24, 2025 order and the February 14, 2025 order.” R.64. But neither the rule of *Jones* and *Amendola* nor the *DeJesus* dictum had been raised in the motions that the trial court had decided in its January 24, 2025 order and its February 14, 2025 order. Consequently, neither of those orders analyzed or addressed why an unconstitutional seizure from a suspected user should be treated any differently than an unconstitutional seizure from a middleman. This appeal follows.

V. Statement of Issues of Law

The police unconstitutionally search and seize drugs from a person based on a hunch not amounting to probable cause that an alleged drug dealer had just provided drugs to that person. Then the Commonwealth charges the alleged drug dealer with possession with intent to distribute and distribution of the unconstitutionally seized drugs.

When the alleged drug dealer moves to suppress the unconstitutionally seized drugs, should it make any difference whether the person from whom the drugs were unconstitutionally seized was a middleman (in which case suppression would be available) rather than a drug user (in which case suppression would not be available)?

VI. Argument

a. Applicable Legal Standard

Mr. Mitchell is not challenging any of the lower court's factual findings, so this appeal presents a pure issue of law that this court reviews *de novo*. *Commonwealth v. Jones-Pannell*, 472 Mass. 429, 431 (2015) ("In reviewing a decision on a motion to suppress, [this court] conduct[s] an independent review of the ultimate findings and conclusions of law.").

Mr. Mitchell sought and received permission to file the motion for reconsideration by which he raised the issue being pursued on appeal, thus definitively resolving any question about that motion's timeliness. *Rodriguez*, 443 Mass. at 708 (timely motion for reconsideration followed by timely notice of appeal preserves issue for appellate review). Moreover, the Commonwealth and the lower court both explicitly agreed to appellate review of this issue in the plea agreement to which all parties and the lower court assented. R.66–67; *Commonwealth v. Soto*, 104 Mass. App. Ct. 806, 813 (2024) (court states that “the better practice” for purposes of issue preservation is to “identify, in the rule 12 (b) (6) agreement, the ruling on the motion to reconsider as well as the ruling on the underlying motion”), review denied, 495 Mass. 1107 (2025), and cert. denied *sub nom. Soto v. Massachusetts*, 146 S. Ct. 151 (2025). The instant issue has thus been preserved for appellate review.

b. Art. 14 Entitles Defendants Charged with Possessing and Distributing Unconstitutionally Seized Drugs to Challenge that Seizure Irrespective of Whether the Unconstitutional Seizure was from a Middleman or a Drug User

Despite being aimed at making it easier for defendants to challenge unconstitutional searches, *DeJesus* propounded a dictum that threatens to leave a sizeable loophole in art. 14 jurisprudence. The *DeJesus* dictum seems to narrow the areas where art. 14 provides greater protections to defendants than does the Fourth Amendment under the guise of eliminating art. 14's standing requirement. These additional protections under art. 14 are discussed in the so-called "automatic standing" cases that stem from *Amendola*, where the SJC "reject[ed] the Supreme Court's abandonment of the automatic standing rule" and "join[ed] a number of States which" had held, "as a matter of State constitutional law," that when "a defendant is charged with a crime in which possession of the seized evidence at the time of the contested search is an essential element of guilt, the defendant shall be deemed to have standing to contest the legality of the search and the seizure of that evidence." 406 Mass. at 600–601.

To be sure, *DeJesus* contains a paragraph stating that the expansion of art. 14 jurisprudence from *Amendola* remains valid as a matter of Massachusetts law.² By agreeing to take on this issue then failing to analyze it, the lower court effectively construed that paragraph to exclude the circumstances of this case. This construction converts *DeJesus* from a decision expanding Massachusetts defendants' constitutional protections to a decision that narrows those protections to the floor set by the federal constitution. Given that *DeJesus*'s stated purpose was to increase rather than decrease Massachusetts defendants' ability to challenge unconstitutional seizures, this court should not allow the lower court's decision to stand.

Insofar as the *DeJesus* dictum should not be outright rejected, this court should nonetheless clarify that suspected drug users in the context of

² *DeJesus*, 489 Mass. at 297, citing *Commonwealth v. Carter*, 424 Mass. 409, 410-411 (1997), *Commonwealth v. Gomes*, 59 Mass. App. Ct. 332, 336 (2003), and *Commonwealth v. Ware*, 75 Mass. App. Ct. 220, 229-230 (2009). *Carter* and *Ware* both cite to *Amendola* as the basis of the expansion of constitutional protections inherent in the Massachusetts's "automatic standing" rule under art. 14.

possession with the intent to distribute cases like this one must be treated as “codefendants” whether or not the suspected user could be charged with the same possessory³ offenses with which the defendant is charged.

³ The SJC has held that distribution is not a “possessory” offense entitling defendants to challenge the seizure from end users of drugs the defendant is charged with having distributed. *Commonwealth v. Santiago*, 470 Mass. 574, 575 (2015). Given the extra-jurisdictional cases persuasively demonstrating how the inseverable link between possession and distribution (the first preceding every instance of the second) means that distribution is a “possessory” offense in the double-jeopardy context see e.g., *State v. Johnson*, 261 Neb. 1001, 1009 (2001) (“[O]ne cannot commit the offense of distribution of a controlled substance without simultaneously committing the offense of possession of a controlled substance.”); *Austin v. Commonwealth*, 33 Va.App. 124, 129 (2000) (“Proof of the elements of the offense of feloniously, knowingly, and intentionally distributing a controlled substance necessarily encompasses proof of the possession of that same controlled substance.”); *Anderson v. State*, 385 Md. 123, 133 (2005) (“It is not possible . . . to ‘distribute’ a controlled dangerous substance . . . unless the distributor has actual or constructive possession (dominion or control) of the substance.”), there is good reason for the SJC to reconsider this holding. See also *Commonwealth v. Frazier*, 410 Mass. 235 (1991) (under Massachusetts law, trafficking is a possessory offense giving rise to automatic standing).

But here, Mr. Mitchell was charged with and pleaded guilty not only to distribution, but also to an indisputably possessory offense (possession of cocaine with intent to distribute). And the only cocaine of which the lower court received evidence at the evidentiary hearing was the crack cocaine recovered from the suspected drug user’s vicinity. R.45 n. 3 (trial court notes that “[n]either party specifically referenced any cocaine recovered from the defendant, his bag, or his car, so the court makes no findings with respect to any other contraband”). Insofar as Mr. Mitchell was charged with and

There is a semantic temptation to exclude drug users from *DeJesus's* definition of codefendants because drug users cannot typically be charged with drug distribution or possession with intent to distribute, but instead only with simple drug possession. See *Carrillo*, 483 Mass. at 290; *Sepheus*, 468 Mass. at 166–167. But that narrow reading runs contrary to the reasoning in the decisions on which the *DeJesus* court relied.

One example is *Commonwealth v. Carter*, 424 Mass. 409 (1997). There, the defendant argued that he should be allowed to challenge the seizure of contraband he had left on a stranger's porch where he had been hiding from police. The SJC rejected the defendant's claim because "it would be more than inappropriate to permit a person fleeing from the police to rely on art. 14 to suppress evidence that he left on some third person's property." But the SJC also reaffirmed the rule allowing a defendant charged with a possessory offense regarding "property in the possession of another at the time of the search" to challenge the search of that other person. *Id.* at 412.

pleaded guilty to possessing with intent to distribute the drugs that were unconstitutionally seized from the suspect drug user's vicinity, this case does not provide an appropriate vehicle for reconsidering *Santiago*.

The SJC reasoned that defendants in such circumstances must be allowed to challenge the government intrusion because “otherwise the person who carried the contraband might go free (because of suppression of the evidence) and the defendant confederate would not.” *Id.* at 411.

The reasoning in *Carter* favors construing the word “codefendant” in the drug distribution context to cover both people who could be charged with distribution themselves, and people who could only be charged with simple possession. In both situations, “the person who carried the contraband might go free (because of suppression of the evidence) and the defendant confederate would not.” *Id.* at 411. Plus, the crime of distribution requires the relinquishment of possession to another person; this requirement that another person receive the drugs in order for the defendant to be convicted provides another reason to allow the defendant to challenge whatever government intrusion resulted in the police obtaining the drugs that the other person is alleged to have received from the defendant.

A narrow reading of *DeJesus*’s definition of codefendant would lead to anomalous, unjust results in the drug-distribution context. A person has

committed distribution as soon as they relinquish possession of the drug to another person whether or not that other person will use the drugs themselves, or else transfer them to a third person; in either case, once the defendant has relinquished possession of the drugs, he has no reason to expect to ever come back into possession of them. Thus, there is thus no reason to allow such a defendant to challenge the seizure of the drugs from the middleman but not from the end user just because the middleman is susceptible to a distribution charge or a possession with intent to distribute charge whereas the user is only susceptible to a simple possession charge.

DeJesus's stated purpose of broadening defendants' rights is well-served by the "participatory interest" analysis set forth in persuasive decisions from other jurisdictions. *DeJesus's* stated purpose was to broaden rather than narrow defendant's rights (by eliminating any standing requirement), and to preserve *Amendola's* retention of the rule from *Jones* that when "a defendant is charged with a crime in which possession of the seized evidence at the time of the contested search is an essential element of guilt." *Amendola*, 406 Mass. at 601. Other jurisdictions that retained this rule as a

matter of state law have incorporated the concept of participatory interest to balance the state's interest in using relevant evidence against distribution defendants' and drug users' rights against unconstitutional seizures.

Even if [a] defendant no longer ha[s] a possessory interest in the drugs he allegedly sold to [a drug user], he certainly ha[s] a participatory interest in them by virtue of his purported role in the drug transaction. Such a participatory interest allows an individual to assert a state constitutional challenge if he or she had some "culpable role, whether as a principal, conspirator, or accomplice, in a criminal activity that itself generated the evidence."

State v. Tejeiro, No. A-4520-14T4, 2016 WL 1637238, at *3–4 (N.J. Super. Ct. App. Div. Apr. 26, 2016), quoting *State v. Mollica*, 114 N.J. 329, 340 (1989); see also *State v. Calabrese*, 216 Vt. 84, 97 (2021) (defendant/boyfriend had "participatory interest" entitling him to challenge seizure of "bullet" from girlfriend's home during welfare check).

Mapped onto the facts of this case, the "participatory interest" concept shows that, whether or not the charges against Mr. Mitchell implicate any possessory⁴ interest in the contraband seized from the suspected drug user's

⁴ See n. 3 above.

vicinity, those charges certainly allege that Mr. Mitchell had a “purported role in the drug transaction.” *Tejeiro*, 2016 WL 1637238, at *3–4. These participatory interest cases provide persuasive support for allowing Mr. Mitchell to challenge the constitutionality of the seizure of crack cocaine from the vicinity of the suspected drug user.

Narrowly defining codefendant to exclude drug users would effectively incentivize police to repeatedly indulge unsupported hunches about a suspected dealer’s retail customers by unconstitutionally shaking down those retail customers (as the police did here). When one of those hunches proves correct, and the police obtain drugs they think they can tie back to the suspected dealer, the police can then use the drugs they unconstitutionally seized as a basis to seize, search, arrest, and prosecute the suspected distributor. Rather than countenancing the potential for there to be an incentive favoring such unjust police conduct, this court should reverse the trial court’s denial of Mr. Mitchell’s motion to suppress.

VII. Reasons Why Direct Appellate Review is Appropriate

This court should grant Direct Appellate Review because the issue of law reviewed above falls into all three categories in Mass. R.A.P. 11(a)(1)–(3). This issue presents “novel questions of law which should be submitted for final determination to” this Court, Mass. R.A.P. 11(a)(1), because no post-*DeJesus* case has had occasion to apply the dictum in *DeJesus* to drugs that were unconstitutionally seized from a suspected user, and then used to bring possessory distribution charges against the suspected dealer. The longer the SJC waits to address this pressing issue, the greater the risk that the perverse incentive created by the *DeJesus* dictum will lead to the increased unconstitutional searches and seizures that it threatens.

The phenomenon of “remedial convergence and collapse” increases the urgency of deciding this issue. “The convergence and collapse has occurred by way of a kind of shell game, where the Court looks at each remedial context separately, and denies one remedy based in part on an unjustified presumption that another remedy will be available to vindicate the underlying right in a different context. The presumption is no longer

workable given that the same demanding standard operates to preclude remedies in so many different contexts.” Leah Litman, *Remedial Convergence and Collapse*, 106 CAL. L. REV. 1477, 1528 (2018). Rather than leaving vulnerable drug users’ rights against unconstitutional searches and seizures to the nigh-impossible demands of prosecuting a civil action against the state and its agents, this court should eliminate any evidentiary incentive that places those rights at risk.

Relatedly, the issue above presents “questions of law concerning the Constitution of the Commonwealth.” A strict reading of *DeJesus* contradicts Massachusetts’ historic commitment to doing better than relying on the floor set by the Fourth Amendment. Aside from the automatic standing context, key areas where art. 14 provides greater protection than the Fourth Amendment include: (1) probable cause and informant standards;⁵ (2) the automobile exception;⁶ (3) exit orders during traffic stops;⁷ (4) the plain view

⁵ *Commonwealth v. Forbes*, 85 Mass.App.Ct. 168 (2014).

⁶ *Commonwealth v. Alvarado*, 420 Mass. 542 (1995).

⁷ *Commonwealth v. Robinson*, 497 Mass. 156 (2026).

doctrine;⁸ (5) the definition of "seizure";⁹ (6) strip and body cavity searches;¹⁰ (7) the exclusionary rule and rejection of the good-faith exception;¹¹ (8) police-created exigency;¹² (9) administrative searches and random drug testing;¹³ and (10) digital privacy.¹⁴

By issuing the *DeJesus* dictum, this court threatens to stray from this Commonwealth's historical course of prioritizing individuals' privacy rights as against government intrusions designed to detect evidence of crime. Prosecutorial evidence gathering is a worthy, legitimate, and necessary undertaking, but incentivizing unconstitutional searches and seizures of drug users as a way to dredge up distribution evidence only serves to sully and delegitimize police officers' predominantly laudable efforts. Even if the U.S. Constitution tolerates such exploitative policing techniques, this court should make clear that art. 14 does not.

⁸ *Commonwealth v. Sliech-Brodeur*, 457 Mass. 300 (2010).

⁹ *Commonwealth v. Shane S.*, 92 Mass.App.Ct. 314 (2017)

¹⁰ *Commonwealth v. Amado*, 474 Mass. 147 (2016).

¹¹ *Commonwealth v. Fredericq*, 482 Mass. 70 (2019).

¹² *Commonwealth v. Alexis*, 481 Mass. 91 (2018).

¹³ *Guiney v. Police Com'r of Boston*, 411 Mass. 328 (1991).

¹⁴ *Commonwealth v. Fulgiam*, 477 Mass. 20 (2017).

Finally, the issue above presents questions of “such public interest that justice requires a final determination by” this court. Mass. R.A.P. 11(a)(3). If an officer has a hunch not amounting to probable cause that he just saw a retail drug sale, and he only cares about convicting the suspect dealer, should the officer just shake down the suspected user, knowing that *DeJesus* will prevent the suspected dealer from challenging the constitutionality of the officer’s search and seizure of the suspected user? If there is to be any vindication of the suspected user’s rights against unconstitutional searches and seizures, must that depend only on whether the suspected user is willing and able to muster the time, energy, emotion, and resources necessary to prosecuting a civil action? See Litman, *supra* at 1526 (discussing courts’ “unjustified presumption that another remedy will be available to vindicate the underlying right in a different context”).

DeJesus was an ill-suited vehicle for tackling this difficult and important question. The facts in *DeJesus* did not involve drugs being seized from a user, codefendant, or anyone else; the drugs in *DeJesus* were seized from a basement. Given that it was not raised by the facts, none of the parties

in *DeJesus* briefed the question whether the defendant should be able to seek the suppression of drugs unconstitutionally seized from a suspected user.

Conversely, the facts of this case squarely present the issue of whether a suspected dealer charged with possession with intent to distribute and distribution of drugs unconstitutionally seized from a suspected user may challenge the constitutionality of that seizure. This issue was fully preserved and briefed below, and appellate briefing of this issue is underway. This court should grant direct appellate review to give this issue the careful, well-reasoned treatment that it deserves.

VIII. Conclusion

For the forgoing reasons, Mr. Mitchell respectfully requests that this court grant this Application for Direct Appellate Review.

Respectfully Submitted,
Jonathan Mitchell,
By his Attorney,



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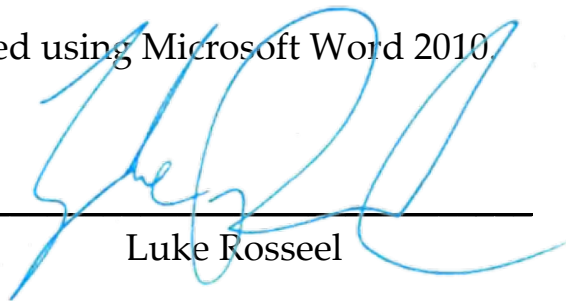
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IX. Certificate of Compliance

I, Luke Rosseel, counsel for the appellant do hereby certify that this the application complies with the Massachusetts Rules of Appellate Procedure that pertain to applications for direct appellate review, including, but not limited to Rule 11(b) and Rule 20(a). I certify further that compliance with Rule 11(b) and Rule 20(a) was ascertained as follows: The proportionally spaced font of the text in this brief is Palatino Linotype, size fourteen; the Argument section in this application contains 1,904 words; and this application was prepared using Microsoft Word 2010.

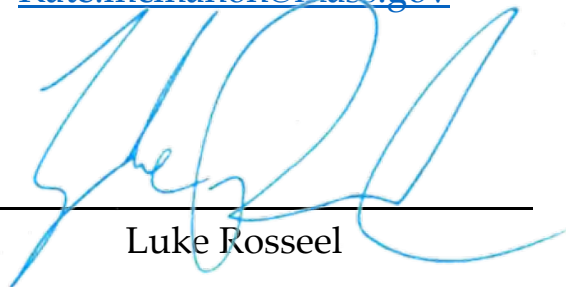


Luke Rosseel

X. Certificate of Service

I, Luke Rosseel, counsel for the Defendant-Appellant in the above-captioned matter, this 11th Day of May, 2026, hereby certify, under penalties of perjury, that I served the forgoing Application for Direct Appellate Review in the above-captioned matter on the following counsel of record by selecting the E-File and Serve option from the Supreme Judicial Court's Electronic Filing Web Portal:

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Luke Rosseel

XI. Addendum

Trial Court Docket..... Add.30

Motion to Suppress Decision..... Add.43

Denial of First Motion for Reconsideration..... Add.51

Denial of Second Motion for Reconsideration..... Add.54

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 11/20/2023
- DCM Track:
- B - Complex
- Initiating Action:
- FIREARM, CARRY WITHOUT LICENSE, 3RD OFF. c269 §10(a) & (d)
- Status Date:
- 12/18/2023
- Case Judge:
- Ritter, Hon. William J
- Next Event:
-

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

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Party Charge Information

• **Mitchell, Jonathan W**
• - Defendant

Charge # 1:

269/10/L-0 - Felony FIREARM, CARRY WITHOUT LICENSE, 3RD OFF. c269 §10(a) & (d)

- Original Charge
- 269/10/L-0 FIREARM, CARRY WITHOUT LICENSE, 3RD OFF. c269 §10(a) & (d) (Felony)
- Indicted Charge
-
- Amended Charge
-

Charge Disposition
Disposition Date
Disposition
12/15/2025
Guilty Plea

- **Mitchell, Jonathan W**
- - Defendant

Charge # 2:
269/10/ZZ-0 - Felony FEEDING DEVICE, POSSESS LARGE CAPACITY c269 §10(m)

- Original Charge
- 269/10/ZZ-0 FEEDING DEVICE, POSSESS LARGE CAPACITY c269 §10(m) (Felony)
- Indicted Charge
- Amended Charge

Charge Disposition
Disposition Date
Disposition
12/15/2025
Guilty Plea

- **Mitchell, Jonathan W**
- - Defendant

Charge # 3:
269/10/AA-2 - Felony FIREARM, POSSESS LARGE CAPACITY c269 §10(m)

- Original Charge
- 269/10/AA-2 FIREARM, POSSESS LARGE CAPACITY c269 §10(m) (Felony)
- Indicted Charge
- Amended Charge

Charge Disposition
Disposition Date
Disposition
12/15/2025
Nolle Prosequi

- **Mitchell, Jonathan W**
- - Defendant

Charge # 4:
265/18B/C-0 - Felony FIREARM IN FELONY, POSSESS LGE CAPACITY c265 §18B

- Original Charge
- 265/18B/C-0 FIREARM IN FELONY, POSSESS LGE CAPACITY c265 §18B (Felony)
- Indicted Charge
- Amended Charge

Charge Disposition
Disposition Date
Disposition
12/15/2025
Guilty Plea

- **Mitchell, Jonathan W**
- - Defendant

Charge # 5:
94C/32A/B-0 - Felony COCAINE, DISTRIBUTE, SUBSQ.OFF. c94C §32A(d)

- Original Charge
- 94C/32A/B-0 COCAINE, DISTRIBUTE, SUBSQ.OFF. c94C §32A(d) (Felony)
- Indicted Charge
- Amended Charge

Charge Disposition
Disposition Date
Disposition
12/15/2025
Guilty Plea




[Load Party Charges 6 through 7](#) [Load All 7 Party Charges](#)
























Events


<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
12/18/2023 09:01 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Arraignment	Callan, Hon. Michael K	Held as Scheduled
12/18/2023 09:19 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	58A Dangerousness Hearing	Callan, Hon. Michael K	Not Held
12/18/2023 10:00 AM	CR Session 3 - Ct. Rm 5	SPRF-2nd FL, CR 7 (SC)	58A Dangerousness Hearing	Bucci, Hon. Jeremy C	Held as Scheduled
01/19/2024 09:37 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Hearing on Compliance	Mulqueen, Hon. Jane E	Not Held
02/28/2024 09:19 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Pre-Trial Hearing	Mulqueen, Hon. Jane E	Held as Scheduled
02/28/2024 09:37 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Hearing on Compliance	Mulqueen, Hon. Jane E	Held as Scheduled
04/01/2024 09:21 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Hearing RE: Discovery Motion(s)	Manitsas, Hon. James M	Not Held
04/01/2024 09:23 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Hearing on Motion to Continue	Manitsas, Hon. James M	Held as Scheduled
04/08/2024 09:15 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Evidentiary Hearing on Suppression	Manitsas, Hon. James M	Rescheduled
05/01/2024 09:35 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Conference to Review Status	Manitsas, Hon. James M	Held as Scheduled
06/25/2024 09:19 AM	Criminal 1 - Ct. Rm. 1		Pre-Trial Hearing	Manitsas, Hon. James M	Not Held
08/07/2024 09:19 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Pre-Trial Hearing	Bucci, Hon. Jeremy C	Not Held
08/07/2024 09:29 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Bail Hearing	Bucci, Hon. Jeremy C	Held as Scheduled
09/26/2024 09:36 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Scheduling Conference	Bucci, Hon. Jeremy C	Held as Scheduled
10/16/2024 09:15 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Evidentiary Hearing on Suppression	Flannery, Hon. Francis E	Rescheduled
11/04/2024 09:36 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Scheduling Conference	Mulqueen, Hon. Jane E	Held as Scheduled
01/23/2025 09:15 AM	Criminal 1 - Ct. Rm. 1		Evidentiary Hearing on Suppression		Not Held
01/23/2025 09:15 AM	CR Session 6 - Ct. Rm 2	SPRF-2nd FL, CR 7 (SC)	Evidentiary Hearing on Suppression	Bucci, Hon. Jeremy C	Held as Scheduled
02/24/2025 09:35 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Conference to Review Status	Mulqueen, Hon. Jane E	Held as Scheduled
04/09/2025 09:35 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Conference to Review Status	Callan, Hon. Michael K	Not Held
05/29/2025 09:35 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Conference to Review Status	Callan, Hon. Michael K	Held as Scheduled
07/30/2025 09:11 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Hearing for Change of Plea	Manitsas, Hon. James M	Rescheduled
09/04/2025 09:11 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Hearing for Change of Plea	Duncan, Hon. Tracy	Not Held
11/04/2025 02:00 PM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Trial Readiness Conference	Mulqueen, Hon. Jane E	Held as Scheduled
12/02/2025 09:00 AM	CR Session 2 - Ct. Rm 3	SPRF-3rd FL, CR 2 (SC)	Final Pre-Trial Conference	Ritter, Hon. William J	Held as Scheduled
12/02/2025 09:39 AM	Criminal 1 - Ct. Rm. 1		Final Pre-Trial Conference		Not Held
12/11/2025 09:00 AM	CR Session 2 - Ct. Rm 3	SPRF-3rd FL, CR 2 (SC)	Hearing for Change of Plea	Ritter, Hon. William J	Not Held
12/15/2025 09:00 AM	CR Session 2 - Ct. Rm 3	SPRF-3rd FL, CR 2 (SC)	Jury Trial	Ritter, Hon. William J	Not Held

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
12/15/2025 09:00 AM	CR Session 2 - Ct. Rm 3	SPRF-3rd FL, CR 2 (SC)	Hearing for Change of Plea	Ritter, Hon. William J	Not Held
12/15/2025 09:07 AM	Criminal 1 - Ct. Rm. 1		Jury Trial		Not Held
12/15/2025 09:11 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Hearing for Change of Plea	Ritter, Hon. William J	Held as scheduled

Ticklers					
<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>	
Pre-Trial Hearing	12/18/2023	05/01/2024	135	02/28/2024	
Final Pre-Trial Conference	12/18/2023	08/30/2024	256	12/02/2025	
Case Disposition	12/18/2023	09/13/2024	270	12/15/2025	














Docket Information					
<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>		
11/20/2023	Indictment(s) returned	1	 		
11/29/2023	Attorney appearance On this date Kerry A Beattie, Esq. added as Attorney for the Commonwealth for Prosecutor Hampden County District Attorney				
12/18/2023	Case assigned to: DCM Track B - Complex was added on 12/18/2023				
12/18/2023	Event Result:: Arraignment scheduled on: 12/18/2023 09:01 AM Has been: Held as Scheduled Hon. Michael K Callan, Presiding Staff: Susan Joaquin, Assistant Clerk Magistrate Edward Partyka, Assistant Clerk Magistrate Nancy Ramos, Assistant Clerk Magistrate				
12/18/2023	Defendant arraigned before Court. Judge: Callan, Hon. Michael K				
12/18/2023	Colloquy - Defendant advised of right to attorney Judge: Callan, Hon. Michael K				
12/18/2023	Defendant waives reading of indictment Judge: Callan, Hon. Michael K				
12/18/2023	Plea of not guilty entered on all charges. Judge: Callan, Hon. Michael K				
12/18/2023	Event Result:: 58A Dangerousness Hearing scheduled on: 12/18/2023 09:19 AM Has been: Not Held For the following reason: Transferred to another session Hon. Michael K Callan, Presiding Staff: Susan Joaquin, Assistant Clerk Magistrate Edward Partyka, Assistant Clerk Magistrate Nancy Ramos, Assistant Clerk Magistrate				
12/18/2023	Event Result:: 58A Dangerousness Hearing scheduled on: 12/18/2023 10:00 AM Has been: Held as Scheduled Hon. Jeremy C Bucci, Presiding Staff: Susan Joaquin, Assistant Clerk Magistrate Michael T Sarnacki, Esq., Assistant Clerk Magistrate				















<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/18/2023	Attorney appearance On this date Timothy Michael Farris, Esq. added as Appointed - Indigent Defendant for Defendant Jonathan W Mitchell Appointment made for the purpose of Case in Chief by Judge Hon. Francis E Flannery.		
12/18/2023	Commonwealth 's Motion for pretrial detention	2	 
12/18/2023	Affidavit of Assistant District Attorney	2.1	  Image
12/18/2023	Endorsement on Motion for pretrial detention, (#2.0): ALLOWED After hearing and argument this motion is allowed. Bucci, J.		  Image
12/18/2023	List of exhibits Judge: Bucci, Hon. Jeremy C	3	  Image
12/18/2023	Finding by Court: Findings and Order on Motion for Detention under G.L. c. 276, Sec. 58A	4	 
12/18/2023	Defendant 's EX PARTE Motion for funds to hire a private investigator	5	  Image
12/18/2023	Affidavit of Timothy M. Farris, Esq.	5.1	  Image
12/18/2023	Endorsement on Motion for funds to hire a private investigator, (#5.0): ALLOWED N. by email		  Image
12/18/2023	The defendant\petitioner is committed without bail for the following reason: Held due to dangerousness C.276 § 58A. Next date: 1/19/24 Judge: Bucci, Hon. Jeremy C	6	 Image
01/18/2024	Defendant 's Motion to suppress warrantless search and seizure	7	 
01/18/2024	Defendant 's Motion to discover location of police post and identity of the officer making the observations	8	  Image
01/19/2024	Event Result:: Hearing on Compliance scheduled on: 01/19/2024 09:37 AM Has been: Not Held For the following reason: Joint request of parties Comments: FTR 1 aarons Hon. Jane E Mulqueen, Presiding Staff: Brian Dolaher, Assistant Clerk Magistrate Susan Joaquin, Assistant Clerk Magistrate Edward Partyka, Assistant Clerk Magistrate		
01/26/2024	Affidavit filed by Defendant Jonathan W Mitchell in support of of Motion to Suppress	9	  Image
02/28/2024	Event Result:: Pre-Trial Hearing scheduled on: 02/28/2024 09:19 AM Has been: Held as Scheduled Comments: ftr 1 adams Hon. Jane E Mulqueen, Presiding Staff: Brian Dolaher, Assistant Clerk Magistrate Michael T Sarnacki, Esq., Assistant Clerk Magistrate		
02/28/2024	Event Result:: Hearing on Compliance scheduled on: 02/28/2024 09:37 AM Has been: Held as Scheduled Comments: ftr 1 adams Hon. Jane E Mulqueen, Presiding Staff: Brian Dolaher, Assistant Clerk Magistrate Michael T Sarnacki, Esq., Assistant Clerk Magistrate		
02/28/2024	Endorsement on Motion to discover location of police surveillance post and identity of the officers making the observations, (#8.0): No Action Taken		  Image
03/21/2024	Commonwealth 's Motion Joint to Advance and to continue Motion to Suppress by Agreement	10	  Image
03/21/2024	Affidavit of of ADA	10.1	  Image
03/21/2024	Endorsement on Motion to Advance and Motion to Continue Motion to Suppress by Agreement, (#10.0): ALLOWED		  Image















Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/26/2024	Defendant 's Graham Discovery Motion	11	 
03/26/2024	Defendant 's Motion to Continue Hearing on Motion to Suppress Hearing	12	  Image
04/01/2024	Event Result:: Hearing RE: Discovery Motion(s) scheduled on: 04/01/2024 09:21 AM Has been: Not Held For the following reason: Joint request of parties Comments: FTR1 Aarons Ramos/Yorlano Hon. James M Manitsas, Presiding Staff: Susan Joaquin, Assistant Clerk Magistrate Nancy Ramos, Assistant Clerk Magistrate Alyson Yorlano, Assistant Clerk Magistrate		 Image
04/01/2024	Endorsement on Motion to Continue Hearing on Motion to Suppress Hearing, (#12.0): ALLOWED		 
04/01/2024	Endorsement on Graham Discovery Motion, (#11.0): No Action Taken Continue to 5/1/24, Rule 36 waived by Defendant		  Image
04/01/2024	Event Result:: Evidentiary Hearing on Suppression scheduled on: 04/08/2024 09:15 AM Has been: Rescheduled For the following reason: Joint request of parties Hon. James M Manitsas, Presiding Staff: Susan Joaquin, Assistant Clerk Magistrate Nancy Ramos, Assistant Clerk Magistrate Alyson Yorlano, Assistant Clerk Magistrate		 Image
04/01/2024	Event Result:: Hearing on Motion to Continue scheduled on: 04/01/2024 09:23 AM Has been: Held as Scheduled Comments: FTR1 Aarons Rams/ Yorlano Hon. James M Manitsas, Presiding Staff: Susan Joaquin, Assistant Clerk Magistrate Nancy Ramos, Assistant Clerk Magistrate Alyson Yorlano, Assistant Clerk Magistrate		
04/01/2024	The defendant\petitioner is committed without bail for the following reason: Held due to dangerousness C.276 § 58A. Next Date: 5/1/24		
05/01/2024	Event Result:: Conference to Review Status scheduled on: 05/01/2024 09:35 AM Has been: Held as Scheduled Comments: FTR 1 foulks Hon. James M Manitsas, Presiding Staff: Susan Joaquin, Assistant Clerk Magistrate Nancy Ramos, Assistant Clerk Magistrate Alyson Yorlano, Assistant Clerk Magistrate		
05/01/2024	Timothy Michael Farris, Esq.'s Notice of withdrawal	13	
05/01/2024	Endorsement on Notice of withdrawal, (#13.0): ALLOWED Judge: Manitsas, Hon. James M		  Image
05/01/2024	Attorney appearance On this date Timothy Michael Farris, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Jonathan W Mitchell		
05/01/2024	Attorney appearance On this date Daniel Dennis Kelly, Esq. added as Private Counsel for Defendant Jonathan W Mitchell	14	  Image
06/25/2024	Event Result:: Pre-Trial Hearing scheduled on: 06/25/2024 09:19 AM Has been: Not Held For the following reason: Joint request of parties Comments: FTR-1 Hon. James M Manitsas, Presiding Staff: Brian Dolaher, Assistant Clerk Magistrate Edward Partyka, Assistant Clerk Magistrate Michael T Sarnacki, Esq., Assistant Clerk Magistrate		
08/07/2024	Event Result:: Pre-Trial Hearing scheduled on: 08/07/2024 09:19 AM Has been: Not Held For the following reason: Joint request of parties		



<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Comments: FTR1 Hon. Jeremy C Bucci, Presiding Staff: Brian Dolaher, Assistant Clerk Magistrate Nancy Ramos, Assistant Clerk Magistrate Alyson Yorlano, Assistant Clerk Magistrate		
08/07/2024	Event Result:: Bail Hearing scheduled on: 08/07/2024 09:29 AM Has been: Held as Scheduled Comments: FTR1 Hon. Jeremy C Bucci, Presiding Staff: Brian Dolaher, Assistant Clerk Magistrate Nancy Ramos, Assistant Clerk Magistrate Alyson Yorlano, Assistant Clerk Magistrate		
08/07/2024	Bail warnings read Judge: Bucci, Hon. Jeremy C		
08/07/2024	Defendant 's Motion to set bail within the Defendant's financial resources	15	 
08/07/2024	Affidavit of Jonathan Mitchell	15.1	  Image
08/07/2024	Endorsement on Defendant 's Motion to set bail within the Defendant's financial resources, (#15.0): Other action taken See findings and order. Bucci, J.		  Image  Image
08/07/2024	Finding and Order on Bail: Judge: Bucci, Hon. Jeremy C	16	  Image
08/07/2024	Bail set at \$0.00 Surety, \$25,000.00 Cash. Next date: 9/26/24	17	
09/19/2024	Defendant 's Motion to suppress evidence	19	 
09/19/2024	Affidavit of Jonathan Mitchell in support of motion to suppress	19.1	  Image
09/19/2024	Jonathan W Mitchell's Memorandum in support of Motion to suppress evidence	20	  Image Image
09/26/2024	Event Result:: Scheduling Conference scheduled on: 09/26/2024 09:36 AM Has been: Held as Scheduled Comments: FTR 1 Foulks Hon. Jeremy C Bucci, Presiding Staff: Susan Joaquin, Assistant Clerk Magistrate Nancy Ramos, Assistant Clerk Magistrate Alyson Yorlano, Assistant Clerk Magistrate		
10/16/2024	Event Result:: Evidentiary Hearing on Suppression scheduled on: 10/16/2024 09:15 AM Has been: Rescheduled For the following reason: Court Closure Comments: water main break Hon. Francis E Flannery, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Susan Joaquin, Assistant Clerk Magistrate Nancy Ramos, Assistant Clerk Magistrate		
11/04/2024	Event Result:: Scheduling Conference scheduled on: 11/04/2024 09:36 AM Has been: Held as Scheduled Comments: FTR 1 Hon. Jane E Mulqueen, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Susan Joaquin, Assistant Clerk Magistrate Edward Partyka, Assistant Clerk Magistrate		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
01/23/2025	Event Result:: Evidentiary Hearing on Suppression scheduled on: 01/23/2025 09:15 AM Has been: Not Held For the following reason: Transferred to another session Hon. Jane E Mulqueen, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Nancy Ramos, Assistant Clerk Magistrate Shana Wilson, Assistant Clerk Magistrate		
01/23/2025	Opposition to Defendant's Motion to Suppress filed by Hampden County District Attorney	21	  Image
01/23/2025	Event Result:: Evidentiary Hearing on Suppression scheduled on: 01/23/2025 09:15 AM Has been: Held as Scheduled Hon. Jeremy C Bucci, Presiding Staff: Michael T Sarnacki, Esq., Assistant Clerk Magistrate		
01/24/2025	ORDER: Findings of Fact, Ruling of Law, and Order on Defendant's Motion to Suppress	22	  Image
01/24/2025	Endorsement on Motion to suppress evidence, (#19.0): DENIED -See Decision		  Image
01/28/2025	List of exhibits	23	  Image
02/12/2025	Defendant 's Motion for Extension of Time to File Rule 15 Petition N. Bucci 02/12/25	24	  Image
02/12/2025	Affidavit of Counsel in support of motion for extension for time to file Rule 15 Petition	24.1	  Image
02/12/2025	Endorsement on Motion for Extension of time to file Rule 15 Petition, (#24.0): ALLOWED		  Image
02/13/2025	Defendant 's Motion for reconsideration N. Judge Bucci	25	  Image
02/13/2025	Jonathan W Mitchell's Memorandum in support of Defendant 's Motion for reconsideration	26	  Image
02/18/2025	Endorsement on Memorandum in support of Defendant 's Motion for reconsideration, (#26.0): DENIED See Decision and Order		  Image
02/18/2025	ORDER: and Decision on Motion to reconsider decision on motion to suppress evidence	27	  Image
02/24/2025	Event Result:: Conference to Review Status scheduled on: 02/24/2025 09:35 AM Has been: Held as Scheduled Comments: FTR1 Hon. Jane E Mulqueen, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Michael T Sarnacki, Esq., Assistant Clerk Magistrate Shana Wilson, Assistant Clerk Magistrate		
03/28/2025	Attorney appearance On this date Luke Rosseel, Esq. added as Private Counsel for Defendant Jonathan W Mitchell	28	  Image
03/28/2025	Defendant 's second motion to reconsider denial of motion to suppress N. Judge Bucci	29	  Image
03/28/2025	Affidavit of Jonathan Mitchell in support of second motion to reconsider denial of motion to suppress- supplemental	29.1	  Image
03/28/2025	Jonathan W Mitchell's Memorandum in support of Second motion to reconsider denial of motion to suppress	30	  Image
03/28/2025	Defendant 's Motion to confirm timeliness or allow late filing N. Judge Bucci	31	  Image
03/28/2025	Affidavit of Luke Rosseel in support of Motion to confirm timeliness or allow late filing	31.1	  Image
03/28/2025	Notice to the Supreme Judicial Court of Interlocutory Appeal Applies To: Mitchell, Jonathan W (Defendant); Rosseel, Esq., Luke (Attorney) on behalf of Mitchell, Jonathan W (Defendant)	32	  Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
04/07/2025	Endorsement on second motion to reconsider denial of motion to suppress, (#29.0): DENIED Denied for the same reasons stated in the January 24, 2025 order and the February 14, 2025 order. (n email)		  Image
04/07/2025	Endorsement on Motion to confirm timeliness or allow late filing, (#31.0): Other action taken The defendant's motion for permission to file second motion to reconsider is granted. (n email) Judge: Bucci, Hon. Jeremy C		  Image
04/09/2025	Event Result:: Conference to Review Status scheduled on: 04/09/2025 09:35 AM Has been: Not Held For the following reason: Joint request of parties Comments: FTR 1 Foulks Hon. Jeremy C Bucci, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Susan Joaquin, Assistant Clerk Magistrate Alyson Yorlano, Assistant Clerk Magistrate		
04/11/2025	Notice to the Supreme Judicial Court of Interlocutory Appeal Applies To: Mitchell, Jonathan W (Defendant); Rosseel, Esq., Luke (Attorney) on behalf of Mitchell, Jonathan W (Defendant)	33	  Image
04/22/2025	Notice of docket entry received from Supreme Judicial Court ORDER: Interlocutory appeal denied. (Kafker, J.)	34	  Image
05/29/2025	Event Result:: Conference to Review Status scheduled on: 05/29/2025 09:35 AM Has been: Held as Scheduled Comments: FTR 1 Hon. Michael K Callan, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Brian Dolaher, Assistant Clerk Magistrate Susan Joaquin, Assistant Clerk Magistrate		
07/29/2025	Defendant 's Agreed upon motion to continue	35	  Image
07/29/2025	Endorsement on Defendant 's Agreed upon motion to continue, (#35.0): ALLOWED		  Image
07/29/2025	Event Result:: Hearing for Change of Plea scheduled on: 07/30/2025 09:11 AM Has been: Rescheduled For the following reason: Joint request of parties Hon. James M Manitsas, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Edward Partyka, Assistant Clerk Magistrate Shana Wilson, Assistant Clerk Magistrate		 Image
09/04/2025	Event Result:: Hearing for Change of Plea scheduled on: 09/04/2025 09:11 AM Has been: Not Held For the following reason: Joint request of parties Comments: FTR 1 Hon. Tracy Duncan, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Nancy Ramos, Assistant Clerk Magistrate Michael T Sarnacki, Esq., Assistant Clerk Magistrate		
11/04/2025	Event Result:: Trial Readiness Conference scheduled on: 11/04/2025 02:00 PM Has been: Held as Scheduled Comments: FTR 1 Hon. Jane E Mulqueen, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Brian Dolaher, Assistant Clerk Magistrate Shana Wilson, Assistant Clerk Magistrate		
11/12/2025	Event Result:: Final Pre-Trial Conference scheduled on: 12/02/2025 09:39 AM Has been: Not Held For the following reason: Transferred to another session Hon. Jane E Mulqueen, Presiding		
11/12/2025	Event Result:: Jury Trial scheduled on: 12/15/2025 09:07 AM Has been: Not Held For the following reason: Transferred to another session Hon. Jane E Mulqueen, Presiding		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
12/02/2025	Event Result:: Final Pre-Trial Conference scheduled on: 12/02/2025 09:00 AM Has been: Held as Scheduled Comments: FTR-Ctrm2-T.Foley/L.Sirois Hon. William J Ritter, Presiding Staff: Shana Wilson, Assistant Clerk Magistrate		
12/02/2025	Joint Pre-Trial Memorandum filed:	36	 
12/09/2025	Defendant 's Motion to stay execution of sentence pending appeal	37	  Image
12/09/2025	Jonathan W Mitchell's Memorandum in support of motion to stay execution of sentence	38	  Image
12/09/2025	Defendant 's Motion to stay execution of sentence until January 6, 2026	39	  Image
12/11/2025	Event Result:: Hearing for Change of Plea scheduled on: 12/11/2025 09:00 AM Has been: Not Held For the following reason: Joint request of parties Comments: FTR2 Aarons Hon. William J Ritter, Presiding Staff: Shana Wilson, Assistant Clerk Magistrate		Image
12/15/2025	Event Result:: Jury Trial scheduled on: 12/15/2025 09:00 AM Has been: Not Held For the following reason: Other event activity needed Comments: FTR 1 Hon. William J Ritter, Presiding Staff: Shana Wilson, Assistant Clerk Magistrate		
12/15/2025	Event Result:: Hearing for Change of Plea scheduled on: 12/15/2025 09:00 AM Has been: Held as scheduled Comments: FTR 1; Plea held in courtroom 1 before J. Ritter Hon. William J Ritter, Presiding Staff: Shana Wilson, Assistant Clerk Magistrate		
12/15/2025	Commonwealth files Nolle Prosequi as to count(s): 3 FIREARM, POSSESS LARGE CAPACITY c269 §10(m)	40	  Image
12/15/2025	Defendant waives rights. Judge: Ritter, Hon. William J	41	  Image
12/15/2025	Defendant warned pursuant to alien status, G.L. c. 278, § 29D. Judge: Ritter, Hon. William J		
12/15/2025	Defendant warned pursuant to the habitual offender statute G.L. c. 279, § 25(d) Judge: Ritter, Hon. William J		
12/15/2025	Defendant warned pursuant to the armed career criminal statute G.L. c. 269, § 10G Judge: Ritter, Hon. William J		
12/15/2025	Defendant warned as to submission of DNA G.L. c. 22E, § 3 Judge: Ritter, Hon. William J		
12/15/2025	Defendant notified of right of appeal to the Appellate Division of the Superior Court within ten (10) days. Judge: Ritter, Hon. William J		
12/15/2025	Defendant notified of right of appeal to the Appeals Court within thirty (30) days. Judge: Ritter, Hon. William J		
12/15/2025	Event Result:: Hearing for Change of Plea scheduled on: 12/15/2025 09:11 AM Has been: Held as scheduled Comments: FTR 1 Hon. William J Ritter, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Brian Dolaher, Assistant Clerk Magistrate Susan Joaquin, Assistant Clerk Magistrate		
12/15/2025	Endorsement on Jonathan W Mitchell's Memorandum in support of motion to stay execution of sentence, (#38.0): DENIED The Defendant was arrested on DUI on eve of plea. Ritter, J.		  Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/15/2025	Endorsement on Defendant's motion to stay execution of sentence until January 6, 2026, (#39.0): DENIED The Defendant was arrested on DUI on eve of last plea date. Ritter, J.		  Image
12/15/2025	Commonwealth, Defendant 's written agreement for conditional guilty plea pursuant to Commonwealth V. Gomez and Mass. R. Crim. P. 12 (b) (6)	42	  Image
12/15/2025	Endorsement on Commonwealth, Defendant 's written agreement for conditional guilty plea pursuant to Commonwealth V. Gomez and Mass. R. Crim. P. 12 (b) (6), (#42.0): ALLOWED		  Image
12/15/2025	ORDER: Stay of Sentence Findings and Order	43	  Image
12/15/2025	Commonwealth 's Motion for forfeiture	44	  Image
12/15/2025	Endorsement on Commonwealth 's Motion for forfeiture, (#44.0): ALLOWED C. Copy to DA		  Image
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12/15/2025	Offense Disposition:: Charge #1 FIREARM, CARRY WITHOUT LICENSE, 3RD OFF. c269 §10(a) & (d) On: 12/15/2025 Judge: Hon. William J Ritter By: Hearing on Plea Offer/Change Guilty Plea Charge #2 FEEDING DEVICE, POSSESS LARGE CAPACITY c269 §10(m) On: 12/15/2025 Judge: Hon. William J Ritter By: Hearing on Plea Offer/Change Guilty Plea Charge #3 FIREARM, POSSESS LARGE CAPACITY c269 §10(m) On: 12/15/2025 Judge: Hon. William J Ritter By: Hearing on Plea Offer/Change Nolle Prosequi Charge #4 FIREARM IN FELONY, POSSESS LGE CAPACITY c265 §18B On: 12/15/2025 Judge: Hon. William J Ritter By: Hearing on Plea Offer/Change Guilty Plea Charge #5 COCAINE, DISTRIBUTE, SUBSQ.OFF. c94C §32A(d) On: 12/15/2025 Judge: Hon. William J Ritter By: Hearing on Plea Offer/Change Guilty Plea Charge #6 COCAINE, POSSESS TO DISTRIBUTE, SUBSQ. c94C §32A(d) On: 12/15/2025 Judge: Hon. William J Ritter By: Hearing on Plea Offer/Change Guilty Plea Charge #7 AMMUNITION WITHOUT FID CARD, POSSESS c269 §10(h)(1) On: 12/15/2025 Judge: Hon. William J Ritter By: Hearing on Plea Offer/Change Guilty Plea		
12/15/2025	Defendant sentenced:: Sentence Date: 12/15/2025 Judge: Hon. William J Ritter Charge #: 1 FIREARM, CARRY WITHOUT LICENSE, 3RD OFF. c269 §10(a) & (d) State Prison Sentence Not Less Than: 7 Years, 0 Months, 0 Days Not More Than: 9 Years, 0 Months, 0 Days Served Concurrently Charge #: 2 FEEDING DEVICE, POSSESS LARGE CAPACITY c269 §10(m) State Prison Sentence Not Less Than: 7 Years, 0 Months, 0 Days Not More Than: 9 Years, 0 Months, 0 Days Served Concurrently Charge #: 6 COCAINE, POSSESS TO DISTRIBUTE, SUBSQ. c94C §32A(d) State Prison Sentence Not Less Than: 7 Years, 0 Months, 0 Days Not More Than: 9 Years, 0 Months, 0 Days Served Concurrently Charge #: 7 AMMUNITION WITHOUT FID CARD, POSSESS c269 §10(h)(1) State Prison Sentence Not Less Than: 7 Years, 0 Months, 0 Days Not More Than: 9 Years, 0 Months, 0 Days Served Concurrently Committed to Souza Baranowski Correctional Center Credits 338 Days Further Orders of the Court: Credit by agreement and order of the court		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/15/2025	Issued on this date: Mittimus for Sentence (All Charges) Sent On: 12/15/2025 13:15:44	46	  Image
12/15/2025	Defendant sentenced:: Sentence Date: 12/15/2025 Judge: Hon. William J Ritter Charge #: 4 FIREARM IN FELONY, POSSESS LGE CAPACITY c265 §18B Served Consecutively Charge # 1 Charge #: 5 COCAINE, DISTRIBUTE, SUBSQ.OFF. c94C §32A(d) Served Consecutively Charge # 1 Further Orders of the Court: standard Probation contract Probation: Risk/Need Probation Duration: 2 Years, 0 Months, 0 Days		
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12/24/2025	Notice to surety bail available for return. Applies To: Mitchell, Clinton (Surety)		
01/06/2026	Attorney appearance On this date Luke Rosseel, Esq. dismissed/withdrawn as Limited Appearance Counsel for Defendant Jonathan W Mitchell		
01/06/2026	Attorney appearance On this date Daniel Dennis Kelly, Esq. dismissed/withdrawn as Private Counsel for Defendant Jonathan W Mitchell		
01/06/2026	Attorney appearance On this date Luke Rosseel, Esq. added as Private Counsel for Defendant Jonathan W Mitchell	48	  Image
01/06/2026	Notice of appeal filed. Applies To: Mitchell, Jonathan W (Defendant); Rosseel, Esq., Luke (Attorney) on behalf of Mitchell, Jonathan W (Defendant)	49	  Image
02/17/2026	Court Reporter frt/ots is hereby notified to prepare one copy of the transcript of the evidence of 01/23/2025 09:15 AM Evidentiary Hearing on Suppression	50	
02/24/2026	CD of Transcript of 01/23/2025 09:15 AM Evidentiary Hearing on Suppression received from Chris O'Neill OTS Transcriber 617-272-5648 Christina O'Neill <chrisieo29@gmail.com>.		
03/19/2026	Attorney appearance On this date Kerry A Beattie, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Hampden County District Attorney		
03/19/2026	Attorney appearance On this date Katherine E McMahon, Esq. added as Attorney for the Commonwealth for Prosecutor Hampden County District Attorney		
03/19/2026	Appeal: Statement of the Case on Appeal (Cover Sheet). Applies To: Hampden County District Attorney (Prosecutor); Mitchell, Jonathan W (Defendant); McMahon, Esq., Katherine E (Attorney) on behalf of Hampden County District Attorney (Prosecutor); Rosseel, Esq., Luke (Attorney) on behalf of Mitchell, Jonathan W (Defendant)	51	  Image
03/19/2026	Notice of assembly of record sent to Counsel Applies To: Hampden County District Attorney (Prosecutor); Mitchell, Jonathan W (Defendant); McMahon, Esq., Katherine E (Attorney) on behalf of Hampden County District Attorney (Prosecutor); Rosseel, Esq., Luke (Attorney) on behalf of Mitchell, Jonathan W (Defendant)	52	  Image
03/20/2026	Notice of Entry of appeal received from the Appeals Court	53	  Image

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Disposed by Plea	12/15/2025	Ritter, Hon. William J

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT
DOCKET 2379CR00506

COMMONWEALTH

vs.

JONATHAN MITCHELL

FINDINGS OF FACT, RULINGS OF LAW, AND ORDER
ON DEFENDANT'S MOTION TO SUPPRESS

The defendant challenges his warrantless stop, search, and arrest made by police on September 13, 2023. The defendant argues that police lacked probable cause to search and arrest him and all evidence seized should be suppressed. The Commonwealth opposes the motion and argues that the police had probable cause to arrest and search the defendant. An evidentiary hearing was held on January 23, 2025, at which two police officers testified and several exhibits were admitted as evidence. After consideration of the evidence and for the following reasons, the motion to suppress is **DENIED**.

Findings of Fact¹

On the evening of September 13, 2023, Sgt. Christopher Hitas (Sgt. Hitas) of the Springfield Police Department (SPD) was conducting surveillance in the area of the parking lot of Planet Fitness located at the corner of Boston Road and Parker Street in Springfield. He was awaiting instructions from colleagues relative to an anticipated search warrant that would be executed nearby. Several other surveillance units were in the area waiting as well.

¹ The court's factual findings are based upon its consideration of all of the evidence presented in the course of the evidentiary motion hearing. As a general matter, the Court credits and adopts the testimony of retired Sgt. Christopher Hitas and Det. Jason Bacis of the Springfield Police Department as truthful in all material respects and incorporates their testimony, by reference, in its findings.

Sgt. Hitas had been a police officer for roughly thirty-five years. He was assigned to the Firearms Investigation Unit and to the Narcotics Unit before that. He had been assigned to narcotics investigation for the preceding ten years. He had received training at the police academy, and in service training throughout his tenure as a police officer on the topic of narcotics investigation. Sgt. Hitas had: been involved in at least one thousand arrests for violations of the narcotics laws; become familiar with undercover operations; become familiar with confidential informant controlled buys; and had done street level surveillance of narcotics on a near daily basis for approximately ten years. He was familiar with the appearance, and packaging of cocaine and heroin, and knew that street level purchases of those substances were placed in bags that would fit inside a closed adult woman's hand without being observed by others. He was also familiar with street level drug transactions and knew that they happened very quickly. Sgt. Hitas was an experienced narcotics investigator. The Planet Fitness parking lot – which also served Frontiera Grille, an Autozone, and a Dollar Store – was one where Sgt. Hitas had previous done surveillance and made arrests for narcotics offenses.

At approximately 6:00 p.m. Sgt. Hitas noticed a red/orange Toyota Tacoma pickup truck enter the parking lot. Sgt. Hitas was parked behind the pickup truck with a clear view of the truck from roughly thirty-five to forty feet away. There was a man operating the truck and a female passenger with dark hair. They remained in the truck in the parking lot for approximately twenty-five minutes. Sgt. Hitas noticed that the operator was looking around the parking lot.

At approximately 6:25 p.m. a black Nissan Maxima with heavily tinted windows quickly pulled up close to the passenger side door of the pickup truck. The driver side door of the Nissan was close to the passenger side door of the pickup truck. The female passenger, later identified as Ms. Boyle (Boyle), opened the door as far as possible and squeezed out of the truck. Sgt. Hitas

did not know Boyle, the operator of the pickup truck, or the defendant, who was driving the Nissan, before this incident. Boyle had United States currency in her hand and she walked around the rear of the Nissan towards the passenger side door. She got into the passenger side door of the Nissan, and Sgt. Hitas observed an interaction between the driver and passenger in the vehicle.² Boyle exited the Nissan within one minute. She had an object clenched within her left hand. Sgt. Hitas could not see what the object was, as the object was small enough so as to not be protruding from her fingers.

Boyle reentered the pickup truck and the operator of the pickup truck drove the truck onto Boston Road. The driver of the Nissan, later identified as the defendant, drove onto Parker Street. Sgt. Hitas opined that he had just observed a classic street level drug transaction. He directed other officers to stop the pickup truck and for others to assist him in following the Nissan. Within minutes officers stopped the pickup in traffic and immediately removed Boyle from the passenger seat. She told officers that she had just purchased marijuana. Notwithstanding her statement about purchasing marijuana, police located a small bag of crack cocaine on the floorboard jam next to the passenger seat. The information was conveyed to Sgt. Hitas who was still following the defendant in the Nissan.

Police intended to stop and arrest the defendant for distribution of the crack recovered in the pickup truck. Sgt. Hitas and the other officers waited to conduct the stop until they could surround the defendant in order to avoid any escalation in danger that would be caused by a potential chase if they were unable to block the defendant's vehicle. The defendant pulled into a gas station at the intersection of Wilbraham Road and Alden Street. Police used the opportunity to pull their cruisers behind and in front of the defendant's Nissan, activated their sirens and low

² Sgt. Hitas did not and could not observe an exchange between the two because of his vantage point, seated in his vehicle, and the tint on the windows of the Nissan.

profile emergency lights in their unmarked police vehicles and ordered the defendant from the vehicle. The defendant complied and was taken into custody without incident.

As the defendant was being handcuffed, Sgt. Hitas removed a camouflage bag that was hanging around the defendant. Sgt. Hitas immediately felt a hard object within the bag and could feel that it was the shape of a firearm. Not wanting to raise the anxiety of the defendant as he was being handcuffed and secured, Sgt. Hitas did not announce “gun” but instead handed the bag to another officer to open and secure its contents. A firearm was secured from the bag.³

Discussion

Warrantless Stop, Search, and Arrest Analysis

A stop of a vehicle is justified when police have reasonable suspicion that the person stopped committed, is committing, or is about to commit a crime. *Commonwealth v. Luna*, 92 Mass. App. Ct. 523, 526 (2017); *Commonwealth v. Haskell*, 438 Mass. 790 793 (2003) (reasonable suspicion required to stop a motor vehicle). “[R]easonable suspicion must be based on specific and articulable facts and the specific reasonable inferences which follow from such facts in light of the officer's experience.” *Id.* (quotation omitted). Police are justified in issuing an exit order when they possess reasonable suspicion that the suspect was engaged in criminal behavior.⁴ See *Commonwealth v. Bostock*, 450 Mass. 616, 621 (2008) (“[W]hen the police reasonably believe that a motorist has committed a crime, a motorist reasonably should expect that the police may

³ The defendant is charged with firearm offenses presumably connected to the firearm in the bag, distribution in connection with the crack recovered from Boyle, and possession with intent to distribute cocaine. The court did not hear testimony about where the cocaine connected to the possession with intent to distribute charge was recovered. The defendant’s Rule 13 affidavit does not inform the court of what kind of “drugs” were allegedly found or importantly where it was taken from. *Commonwealth v. DeJesus*, 489 Mass. 292, 293 (2022) (“a defendant need show only a reasonable expectation of privacy in the place searched to contest a search or seizure. In almost all situations, a defendant contesting a search or seizure will need to show his or her own reasonable expectation of privacy in the place searched”). Neither party specifically referenced any cocaine recovered from the defendant, his bag, or his car, so the court makes no findings with respect to any other contraband.

⁴ The Commonwealth did not suggest and the evidence did not support any finding that any civil motor vehicle infractions occurred prior to the stop.

engage in greater intrusions than when the motorist is suspected merely of a driving infraction”). See also *Commonwealth v. Torres-Pagan*, 484 Mass. 34, 38 (2020) (reasonable suspicion of criminal activity justifies exit order).

Sgt. Hitas, who had significant experience investigating drug offenses, described the having conducted drug investigations and having made arrests in the parking lot previously. See *Commonwealth v. Brillante*, 399 Mass. 152, 155 (1987) (officer’s description of the area as a place that was frequently the site of, among other things, drug transactions justified finding of a high crime area). Sgt. Hitas also watched from roughly forty feet away as Boyle got out of the pickup with money, got into the defendant’s vehicle with the money, and then less than one minute later returned to the pickup truck with a small object concealed in her hand. Sgt. Hitas opined that this activity was consistent with a street level drug transaction. See *Commonwealth v. Taglieri*, 378 Mass. 196, 200, cert. denied, 444 U.S. 937 (1979) (“weight must be given to the special experience of a law enforcement officer. . . .”); *Commonwealth v. Kaufman*, 381 Mass. 301, 305 (1980) (“Weight may be given to the experience of law enforcement officers regarding criminal techniques”); *Commonwealth v. Fenderson*, 410 Mass. 82, 88 (1991) (officer’s expertise properly weighed in establishing a link between drug dealers and the use of safe deposit boxes). Where “the whole ‘silent movie’ disclosed to the eyes of an experienced narcotics investigator a sequence of activity consistent with a drug sale at a place notorious for illicit activity in narcotics . . . there was a basis reasonably to conclude that illicit activity was occurring.” *Commonwealth v. Santaliz*, 413 Mass. 238, 242 (1992).

The suspected exchange of drugs in this case is similar to *Commonwealth v. Stewart*, 469 Mass. 257 (2014). In that case, an experienced drug control officer observed the defendant, whom they had arrested three years earlier for drug distribution, walking with three other people towards

a high drug area. The defendant in that case then ducked into a doorway with the other three people and the drug officer observed the four huddled together. The officer did not see an exchange but inferred that an exchange had taken place. The defendant separated from the other three and was stopped by police. The defendant lied to police about having met with other people and the police searched him and recovered drugs. The Supreme Judicial Court ruled that, “[t]here inevitably is a narrow line separating reasonable suspicion from probable cause, but in this ‘silent movie,’ where the observing police officer saw four people in a huddle but did not see the defendant himself (or anyone) actually make an exchange, the inference of an actual distribution of a controlled substance involving the defendant falls on the reasonable suspicion side of that line.” *Id.* at 264. Here, Sgt. Hitas could see that Boyle interacted with the defendant in the Nissan but could not say what occurred. Indeed, in this case Sgt. Hitas did not know either party to the suspected transaction when he made the observations, making the significance of his observations even more distant from the probable cause line. On the other hand, Sgt. Hitas did see Boyle holding money as she got into the Nissan and observed that Boyle was not only not hold money when she got out of the Nissan, but was also holding something small in her left hand. Nevertheless, Sgt. Hitas did not possess probable cause to stop and arrest the defendant at the conclusion of the suspected drug transaction.

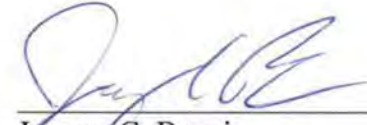
After accumulating the above information, Sgt. Hitas waited for a stop of Boyle to confirm his suspicions before engaging the defendant. Police stopped Boyle, learned that she admitted to having just bought “marijuana” and then located a small bag of crack cocaine. “Probable cause exists where, at the moment of arrest, the facts and circumstances within the knowledge of the police are enough to warrant a prudent person in believing that the individual arrested has committed or was committing an offense.” *Santaliz*, 413 Mass. at 241 quoting *Commonwealth v.*

Storey, 378 Mass. 312, 321 (1979). “[P]robable cause does not require definitive proof of criminal activity. And officers need not rule out a suspect's innocent explanation for suspicious facts . . .” [citations and quotations omitted] *Commonwealth v. Guastucci*, 486 Mass. 22, 26 (2020). With the admission from Boyle that she had indeed just been involved in the purchase of drugs and the discovery of a small bag of cocaine, police certainly had probable cause to arrest the defendant for distribution of cocaine. Cf. *Commonwealth v. Hill*, 49 Mass. App. Ct. 58, 63-64 (2000) (probable cause found where a vehicle pulled up and a brief interaction occurred between two people where an item was retrieved; the interaction occurred in a place known by police as a place of high drug area; the transaction was witnessed by an experienced officer; and drugs were found on the alleged buyer).

Following the lawful arrest of the defendant, police were entitled to search the defendant (and his car) for evidence of the crime of distribution of cocaine. See G.L. c. 276, § 1 (authorizing the search for evidence connected to the crime and weapons incident to arrest). Additionally, because the defendant was lawfully arrested and Sgt. Hitas felt what he recognized to be a firearm within the bag as he removed the bag from the defendant, police were entitled to seize the firearm inside the bag. See *Commonwealth v. Wilson*, 441 Mass. 390, 392 (2004) (recognizing the constitutionality of the “plain feel” doctrine in Massachusetts).

Order

For the foregoing reasons, defendant's motion to suppress is **DENIED**.



Jeremy C. Bucci
Associate Justice of the Superior Court

Date: January 24, 2025

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT
DOCKET 2379CR00506

HAMPDEN COUNTY
SUPERIOR COURT
FILED

FEB 14 2025

Jonathan Mitchell
CLERK OF COURTS

COMMONWEALTH

vs.

JONATHAN MITCHELL

DECISION ON DEFENDANT'S MOTION TO RECONSIDER DECISION ON
MOTION TO SUPPRESS EVIDENCE

The defendant has asked the court to reconsider its ruling on the defendant's motion to suppress evidence (PAPER #22). The defendant raises for the first time the issue of target standing and suggests that the defendant should be granted target standing to challenge the stop of the alleged drug buyer in this case. For the reasons that follow the defendant's motion to reconsider is DENIED.

In this case, the experienced drug investigator made observations consistent with a street level sale – the buyers parked, waited several minutes and did not go into any public establishment, the defendant arrived, the buyer got into the defendant's car with money in her hand, and less than a minute later got out and back into her truck with something concealed in her hand – in a parking lot where he had personally made arrests for drug sales in the past.¹ After observing the suspected street level drug transaction between the defendant and the alleged buyer, the police stopped the alleged drug buyer, who made a statement confirming that she had just bought drugs, and the police recovered a small bag of cocaine.

Target standing is a theory of suppression where a defendant asserts a claim that the constitutional rights of a separate individual were violated and asks a court to suppress the evidence

¹ The court does not recite all of the facts previously found but instead relies on the factual findings in the prior decision to support the rulings of law in this decision.

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seized from the third party because the defendant was the target of the police investigation. Absent “distinctly egregious” police conduct courts in Massachusetts do not recognize target standing. *Commonwealth v. Scardamaglia*, 410 Mass. 375, 380 (1991). There is nothing about the police conduct in this case that causes the court to make a finding of distinctly egregious police conduct. Indeed, the conduct in this case is largely indistinguishable from other cases where Massachusetts appellate courts have declined to find distinctly egregious conduct. See *Commonwealth v. Santiago*, 470 Mass. 574, 564 (2015) (no target standing where experience drug officer in high crime area observed defendant extend arm towards buyer who then put something in his pocket *even where police simultaneously stopped defendant and buyer*); *Commonwealth v. St. George*, 89 Mass. App. Ct. 764, 769 n.10 (2016) (no target standing where drug unit officers watch buyer use phone and wait for defendant, defendant pulled up and buyer got into car, the defendant drove a very short distance to another car where the buyer got out and into another car and the buyer fled from police, *even where police stopped and detained the defendant and waited for confirmation of drugs recovered from buyer* a short time later and then arrested the defendant). Here, police arguably had reasonable suspicion to stop the buyer, and police did nothing to implicate the defendant’s constitutional rights until they had gained a statement and recovered drugs from the buyer. The court discerns no distinctly egregious police conduct here.

The defendant also argues that because the buyer in this case initially confirmed that she had purchased marijuana, but police did not locate marijuana, her statements cannot be relied upon in the probable cause analysis. Police were entitled to take the buyer’s admission to having just purchased drugs in context where police also discovered cocaine when evaluating whether the buyer was attempting to minimize her own conduct, and more importantly when police were evaluating whether probable cause existed to stop the defendant. Accord *Commonwealth v. Diaz-*

Arias, 98 Mass. App. Ct. 504, 510 (2020) (“While one might imagine an innocent explanation for the observed behavior, one does not have to indulge the innocent explanations in evaluating probable cause”). “[P]robable cause does not require definitive proof of criminal activity. And officers need not rule out a suspect's innocent explanation for suspicious facts . . .” [citations and quotations omitted] *Commonwealth v. Guastucci*, 486 Mass. 22, 26 (2020).

Order

For the foregoing reasons, defendant’s motion to reconsider is **DENIED**.



Jeremy C. Bucci
Associate Justice of the Superior Court

Date: February 14, 2025

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

HAMPDEN, s.s.

SUPERIOR COURT DEPT.

COMMONWEALTH OF MASSACHUSETTS,)

HAMPDEN COUNTY)
SUPERIOR COURT)

v.)

FILED)

JONATHAN MITCHELL,)

MAR 28 2025)

DOCKET NO. 2379CR00506

Defendant.)

[Signature])
CLERK OF COURTS)

SECOND MOTION TO RECONSIDER DENIAL OF MOTION TO SUPPRESS

The defendant, Jonathan Mitchell, hereby moves the court to RECONSIDER its January 24, 2025 order denying Mr. Mitchell's motion to suppress, and to SUPPRESS all of the evidence seized and statements obtained on September 13, 2023 pursuant to the stop of the vehicle in which Ms. Boyle was a passenger, and pursuant to the stop and arrest of Mr. Mitchell. As grounds for this motion, Mr. Mitchell submits the accompanying memorandum of law and supplemental affidavit.

WHEREFORE, Mr. Mitchell respectfully requests that the court RECONSIDER the MTS Order and SUPPRESS all of the evidence seized and statements obtained on September 13, 2023 pursuant to the stop of the vehicle in which Ms. Boyle was a passenger, and pursuant to the stop and arrest of Mr. Mitchell.

In the alternative, should the court decide that the evidence in the record is not sufficient to allow the court to determine the legality of the stop and other police actions toward Ms. Boyle and the vehicle in which she was a passenger, Mr. Mitchell respectfully requests that the court set this matter down for an additional evidentiary hearing on Mr.

Denied for the same reasons stated in the January 21, 2025, order and the February 14, 2025, order. n. email Bucci, J 4/7/25

21 *N. J. Bucci*

Add.37