

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

SUFFOLK, ss.

**SJC No. DAR-
App. Ct. No. 2024-P-1111**

**COMMONWEALTH OF MASSACHUSETTS
APPELLEE**

V.

**JOSE ARIAS
APPELLANT**

**ON APPEAL FROM A JUDGMENT OF THE
SUFFOLK SUPERIOR COURT**

**APPLICATION FOR DIRECT APPELLATE REVIEW
REFERENCES IMPOUNDED MATERIAL**

**JOHN P. WARREN
Law Office of John P. Warren
132 Lincoln Street, Suite 5L
Boston, MA 02111
BBO #685597
(617) 383-4482
*john@johnpwarrenlaw.com***

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REQUEST AND REASONS
FOR DIRECT APPELLATE REVIEW

Mr. Arias' case presents a confluence of novel, important issues that test the limits of police authority to stop and arrest drivers.

In denying the motion to suppress, the judge upheld the stop of Mr. Arias' vehicle on the grounds that he had committed a civil traffic infraction – an unlawful left turn, rather than any ongoing violation – *one full day earlier*. Following Mr. Arias' motion to suppress, this Court decided *Commonwealth v. Daveiga*, 489 Mass. 342, 353-354 (2022), which recognized, in *dicta* based on citation to federal authority, that delay in initiating a traffic stop may render the stop unconstitutional.

But this Court has not had occasion to decide such a case – until now. Mr. Arias' case presents the opportunity to set forth guidelines for determining when an officer's delay in addressing a traffic infraction violates art. 14. The delay issue is particularly compelling here because the motion judge explicitly found that the civil infraction from the previous day was not even the “real reason” for the stop; it was just a pretext.

The express finding that the stop was pretextual also provides the ideal record to answer a question that – according to a 2020 concurrence from our now-Chief Justice –

is unresolved: the constitutionality of pretextual stops under art. 14. See *Commonwealth v. Long*, 485 Mass. 711, 748 (2020) (Budd, J., concurring) (the oft-cited *Commonwealth v. Santana*, 420 Mass. 205 (1995), which lacked a judicial finding of pretext, did not specifically consider the legality of using a pretext to make an investigatory stop under art. 14).

Several other issues of significance – and first impression – arise from the officers’ *post*-stop actions: forcibly removing Mr. Arias from the vehicle and patfrisking him. Seeking to justify that police conduct, the Commonwealth argued that the officers had authority to arrest Mr. Arias for failure to stop for police. This raises antennas. Mr. Arias’ driving measures were *de minimis*: after the officer’s lights and siren were activated, Mr. Arias travelled for less than 0.1 miles, and attempted to turn off a congested, one-lane thoroughfare onto a side street. Further, failure to stop for police – punishable only by a maximum \$100 fine – is a *non*-jailable offense. See G.L. c. 90, § 25.

Nevertheless, the motion judge ruled that there was probable cause that Mr. Arias failed to stop for police, under § 25. Then – without making any determination as to whether arresting Mr. Arias was *reasonable* – the motion judge upheld the validity of the arrest based solely on a police officer’s statutory authority to arrest motorists for failure to stop. See G.L. c. 90, § 21.

Three important questions flow from the judge's legal analysis.

First, a novel question emerges: whether art. 14 imposes any limitations on a police officer's statutorily-derived power to arrest for a non-jailable, fine-only misdemeanor offense, such as failure to stop. In *Atwater*, a narrow, 5-to-4 decision, the Supreme Court resolved the issue under *federal* constitutional law. *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001) (statutorily-authorized arrests for fine-only misdemeanors require no reasonableness balancing under Fourth Amendment). But the issue remains undecided on Massachusetts state constitutional grounds. This Court should follow numerous other state courts in departing from *Atwater*, and make clear that, notwithstanding statutory authorization, art. 14 does not tolerate *unreasonable* arrests for non-jailable, fine-only misdemeanors.

Second, this case presents the opportunity to shape the contours of the archaic, but frequently utilized,¹ failure to stop statute, G.L. c. 90, § 25. Section 25 has constitutional vagueness problems: its standardless punishment of those who "neglect" to stop for police fails to adequately inform

¹ Failure to stop for police was the tenth most common motor vehicle charge filed in district or municipal courts in FY2024, filed more than 2,000 times. <https://public.tableau.com/app/profile/drap4687/viz/MassachusettsTrialCourtChargesDashboard/AllCharges>.

motorists when their driving actions turn criminal, thus “entrust[ing] lawmaking to the moment-to-moment judgment of police officers.” See *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). The motion judge’s determination that Mr. Arias’ driving – which even the Commonwealth conceded was “a very small incident” (T4/135) – amounted to failure to stop also warrants review. Line-drawing by this Court concerning the reach of § 25 would offer much-needed guidance to lower courts and help prevent misuse of the statute by law enforcement. See *Commonwealth v. Larose*, 483 Mass. 323, 341 (2019) (Lenk, J., dissenting) (“Where the court’s interpretation of this statute also affords an officer ‘discretion as to when to stop drivers for such possible violations,’ or to stop anyone who crosses a fog line in order to investigate whether that action was intentional, it increases the risk of pretextual stops”).

Third, this case presents the novel question of whether pretextual *arrests* are permissible under art. 14. Although the officers’ post-stop actions were upheld on failure to stop grounds, Mr. Arias was never actually arrested, cited, or charged for failing to stop for police. Much like the stop itself – which the judge below found was pretextual – so too were the exit order and patfrisk based on ulterior motives. While pretextual arrests are generally permissible under the federal constitution, see *Arkansas v. Sullivan*, 532 U.S. 769, 770-772

(2001), this Court should follow other states – including Arkansas and Washington – in invalidating pretextual arrests under state constitutional law.

A final issue deserving this Court’s attention arose at trial: whether the trial judge erred in declining to conduct an inquiry of a juror whose post-verdict letter raised the possibility that bias based on disability infected the jury and tainted jury deliberations.

Because the variety of important and unresolved issues in this case presents the opportunity to advance Massachusetts law concerning traffic stops and arrests, this Court should grant direct appellate review under Mass. R.A.P. 11.

PRIOR PROCEEDINGS

On September 10, 2019, Mr. Arias was arraigned on one count of trafficking, class B (cocaine), 200 grams or more, G.L. c. 94C, § 32E(b)(4). (R1.14,34).²

On December 17, 2019, Mr. Arias filed a motion to suppress the drugs on the grounds that his stop, seizure, and arrest were unconstitutional. (R1.15,64-68). The suppression hearing was held on April 27, 2021 (Krupp, J.). (R1.19). In a written decision issued June 17, 2021, the motion judge allowed the motion to suppress only as to certain defendant statements. (R2.41-50;A.59-68). The motion to suppress was otherwise denied. (R2.41-50;A. 59-68).

After the first trial resulted in a deadlocked jury and mistrial, the retrial commenced (Budreau, J.) on March 11, 2024. (R1.24-25,29). That day, the Commonwealth's motion to reduce the indictment to trafficking, class B (cocaine), 100 to 200 grams, was allowed. (R1.29;R2.76). On March 14, 2024, Mr. Arias was convicted of a lesser-inclusive offense:

² Citations to the Addendum – which includes the suppression decision and the judge's order denying Mr. Arias' request for a mistrial – are referred to as (A.*page*). Transcripts submitted to be Appeals Court are referred to as (T*volumepage*). The record appendices filed in the Appeals Court are referenced as follows: Record Appendix Volume One (R1.*page*); Record Appendix Volume Two (R2.*page*); Impounded Record Appendix (IR.*page*).

trafficking, class B (cocaine), 18 to 36 grams, G.L. c. 94C, § 32E(b)(1). (R1.31;R2.79).

Mr. Arias was sentenced on March 25, 2024, to state prison for two years to two-years-and-one-day. (R1.32;R2.161). Mr. Arias timely appealed. (R1.32;R2.172).

This case was entered in the Appeals Court on September 26, 2024 as No. 2024-P-1111, and Mr. Arias' brief was filed on March 21, 2025.

STATEMENT OF FACTS

1. The motion to suppress.

A. The alleged traffic infraction in Jamaica Plain on March 27.

On March 27, 2019, Boston Police Drug Control Unit (“DCU”) officers were on patrol in Brighton, wearing plain clothes and in unmarked vehicles. (R2.41;A.59). At 3:10 pm, DCU Sgt. Det. Feeney observed a light-skinned Hispanic male, later identified as Mr. Arias, enter the driver’s seat of a Chevrolet Equinox SUV (“SUV”)³ that was parked on Foster Street and drive away. (R2.41-42;A.59-60).

At the outset of the hearing, the parties stipulated that the Commonwealth would neither introduce, nor rely upon, information concerning a purported drug investigation as a basis for the stop and seizure of Mr. Arias. (T4/5-6). The motion judge’s decision notes: “[c]onsistent with the parties’ stipulation, I do not rely on the fact that police had any information prior to Sgt. Det. Feeney’s observations [at 3:10 pm on March 27].” (R2.41-42;A.59-60). “[P]olice apparently had information about the SUV on March 27, 2019, but the Commonwealth does not rely on such information. I do not know what information the police had.” (R2.41-42;A.59-60).

³ The SUV was registered to a 61-year-old Black man. (R2.41-42;A. 59-60).

Sgt. Det. Feeney followed the SUV as it turned right onto Washington Street but lost sight of it when he got snarled in traffic. (T4/17,20;R2.42;A.60). He did not observe the SUV commit any traffic violations. (T4/33).

DCU Officer Pieroway, driving an unmarked vehicle, heard radio communications from Sgt. Det. Feeney and located the SUV on Washington Street in the Oak Square area of Brighton. (R2.42;A.60). Officer Pieroway followed the SUV from Oak Square to Centre Street in Jamaica Plain – a six-mile route depicted below – without incident. (R2.42;A.60).



(R1.199).

As Officer Pieroway followed the SUV on Centre Street in Jamaica Plain, traffic was heavy. (R2.42;A.60). There was

a line of cars stopped at a stop sign at the intersection of Centre and South Streets. (R2.42;A.60). Centre Street has a single lane of travel, but there was enough room to drive in the bike lane to the right of the line of traffic. (R2.42;A.60). Officer Pieroway observed the SUV pull quickly to the right side of the line of traffic, pass about seven vehicles, fail to stop at the stop sign, and take an immediate left in front of the line of traffic. (R2.42;A.60).

Officer Pieroway's unmarked vehicle lacked sirens or "any means to pull a car over." (T4/79). Officer Pieroway testified that it was, accordingly, his "practice" to call for a marked police unit to initiate a motor vehicle stop. (T4/78). Despite his observation of the traffic infraction at Centre and South Streets, however, Officer Pieroway did not call for a marked unit to stop the SUV. (T4/87-88). Officer Pieroway acknowledged that Centre Street would have been congested at this time of day. (T4/91).

The judge found that "because he was in an unmarked vehicle without immediate backup, and because of his safety concerns, Officer Pieroway terminated his surveillance of the SUV." (R2.42;A.60). Presumably, this finding was based on Officer Pieroway's testimony that "it would not be safe for [him] to conduct the same maneuver [as the SUV] and maintain visual surveillance on [the SUV]." (T4/107).

The motion judge's findings, however, do not specifically

address Officer Pieroway's decision not to call for a marked unit to stop Mr. Arias. On cross-examination, when Officer Pieroway was asked what prevented him from requesting a marked unit, he responded: "Safety." (T4/88). Officer Pieroway did not explain what would have been unsafe about calling a marked unit to stop Mr. Arias. On cross-examination, when Officer Pieroway was asked "[s]o you really had no intention of trying to stop this vehicle?" and answered, "[o]n that day, I did not." (T4/88). Mr. Arias was not stopped for the observed motor vehicle infraction.

B. The search and seizure of the Mr. Arias in Brighton on March 28.

The following day, March 28, 2019, at about 3:15 pm, Sgt. Det. Feeney observed Mr. Arias exit a residence in Brighton and enter the SUV he had been driving the day before, which was parked on Foster Street. (R2.43;A.61). Sgt. Det. Feeney was parked about "10 or 12 car lengths" behind the SUV and "immediately" recognized Mr. Arias from the day before. (T4/34). Sgt. Det. Feeney did not stop Mr. Arias as he walked from the residence to the SUV or when Mr. Arias entered the vehicle. Rather, he waited for Mr. Arias to drive the vehicle away. See *Long*, 485 Mass. at 743 (Budd, J., concurring) (noting that traffic stops motivated by civil motor vehicle infractions permit "the very same investigatory stops we rightly prohibit when [people] are on foot").

Sgt. Det. Feeney followed the SUV as it traveled up Foster Street and turned onto Washington Street but again got tied up in traffic. (R2.43;A.61). Officer Pieroway heard Sgt. Det. Feeney's radio calls and saw the SUV near Chestnut Hill Avenue and Washington Street. (R2.43;A.61). Despite having observed no new traffic infractions since the day before, Officer Pieroway followed the SUV and requested that a marked police vehicle stop it. (R2.43;A.61).

Officer Pieroway stated over the radio: "We're looking to stop a vehicle *for a drug investigation.*" (R2.43;A.61 [emphasis supplied by motion judge]). The motion judge explicitly found that "[t]he traffic infraction on March 27, 2019 was a pretext for the motor vehicle stop on March 28, 2019." (R2.44;A.62). The judge determined that the "real reason" for the March 28 stop was "to allow the DCU officers to pursue a drug investigation related to defendant and/or the SUV." (R2.44;A.62).⁴ To be clear, pursuant to the stipulation, no evidence regarding the purported drug investigation was introduced or relied upon by the Commonwealth. (T4/5-6;R2.41-42;A.59-60).

⁴ The motion judge noted that within four minutes of Officer Pieroway calling the marked unit to make the stop, he had requested the presence of a drug sniffing dog, which was cancelled minutes later, after Mr. Arias was patfrisked. (R2.44;A.62).

The marked unit arrived on Market Street – which runs one lane in each direction (R1.195-197) – and got behind the SUV; Officer Pieroway followed behind the marked unit. (R2.43;A.61). The marked unit activated its lights and sirens “shortly after turning onto Market Street, just before Henshaw Street.” (T4/64,76;R2.43;A.61). The SUV “proceeded slowly about a block, past a few businesses, to the next street on the left (Bennett Street) and attempted to take a left onto Bennett Street.” (R2.43;A.61). Officer Pieroway testified that the SUV was travelling at a “slow crawl ... under the speed limit.” (T4/67-68). DCU Detective Miskell, who was also following behind the marked unit, pulled his vehicle slightly to the left, stopping the heavy oncoming traffic heading in the opposite direction. (R2.43;A.61). Det. Miskell’s maneuver “effectively cut off the SUV’s ability to take a left onto Bennett Street because the SUV was blocked by the stopped line of traffic heading in the opposite direction.” (R2.43;A.61). Officers immediately approached the SUV and ordered Mr. Arias to exit. (R2.44;A.62).

The Court should take judicial notice that the distance on Market Street between Henshaw and Bennett Street is approximately 350 feet.⁵ There are no streets that intersect

⁵ See *Commonwealth v. Warren*, 475 Mass. 530, 531, n.4 (2016) (where record contains “geographical context for our review ... [appellate court] may take judicial notice of the

with Market Street in between Henshaw and Bennett:



(R1.187).

Market Street has on-street parking (T4/73), but there was no evidence of open parking spaces for Mr. Arias to pull into. In fact, after hearing the evidence, the motion judge rejected the Commonwealth's contention that there would have been open parking spots on the righthand side of Market Street: "I can't find that there was space to the right for Mr. Arias to pull over. No one has told me that.... [W]e have every reason to believe that [Market Street] was pretty – pretty full at that time of the day." (T4/149).

location").



(R1.196, depicting Market Street, with Bennett Street off to the left).

Officers immediately “exited” Mr. Arias from the SUV and then moved him to the sidewalk. (R2.44;A.62). Officer Pieroway drove the SUV to a parking lot because the SUV, as situated, was “blocking the flow of traffic on both sides.” (T4/68).

The motion judge found that officers did not request Mr. Arias’ driver’s license or registration. (R2.44;A.62). There was no evidence that Mr. Arias was ever cited for the alleged March 27 traffic infraction in Jamaica Plain. Nor was there

any evidence that Mr. Arias was cited for, or charged with, failing to stop for police on March 28 in Brighton.

Detective Miskell approached Mr. Arias and identified himself as a DCU detective, but did not tell Mr. Arias that he was under arrest. (R2.44;A.62). Detective Miskell patfrisked Mr. Arias and found a hard object in his pocket; when asked, Mr. Arias stated that the object was cocaine. (R2.44;A.62). Mr. Arias was handcuffed and read *Miranda* warnings. (R2.44;A.62). Mr. Arias directed police to additional drugs in the SUV, which police seized. (R2.44;A.62).⁶

2. Deliberating juror's post-verdict letter.

Jury deliberations began on March 13, 2024. (R1.30). The jury resumed deliberations on the morning of March 14, 2024, and at 10:35 am submitted a note that read: “[t]he jury is unable to reach a unanimous decision at this time.” (R1.30-31;R2.130-131). After a pre-*Tuey-Rodriguez* instruction, the jury was sent back out to deliberate, and the verdict was returned that same day at 3:45 pm. (T14/6-8;R1.30-31).

Three hours after the verdict was returned, defense counsel received a letter, via email, from one of the deliberating jurors. (IR.6-7). The same letter was also

⁶ The motion judge suppressed certain statements made by Mr. Arias following his removal from the SUV. (R2.48-49;A.66-67).

provided to the clerk's office. (IR.8). In the letter, the juror stated that they have autism spectrum disorder and were pressured by other jurors into rendering the guilty verdict.⁷ (IR.8).

Upon receiving the letter, Mr. Arias moved for a mistrial or, alternatively, for the trial judge to interview the juror. (R2.156;IR.3-5). After briefing and argument, the trial judge denied Mr. Arias' motion and declined to interview the juror. (R2.169-171;A.69-71).

⁷ Like the trial judge (R2.169-171), this petition uses the pronouns "they" and "their" for this juror.

ISSUES PRESENTED

Mr. Arias moved to suppress the drugs on the basis that his stop and arrest were unconstitutional, preserving his right to challenge those police actions. He also properly preserved the juror-letter issue by moving for a mistrial or, alternatively, an inquiry of the juror.

Suppression issues

1(A). Whether the officers' delay in addressing the alleged civil traffic infraction – which involved an improper lefthand turn – for a *full day* was unreasonable, rendering the stop of Mr. Arias unconstitutional.

1(B). Whether the stop violated art. 14, given the motion judge's explicit finding that the civil traffic infraction was a pretext and not the "real reason" for the stop.

2(A). Whether officers lacked probable cause that Mr. Arias committed the arrestable crime of failure to stop for police based on *de minimis* facts, including traveling slowly for less than 0.1 miles and attempting to turn off of a busy street.

2(B). Whether the failure to stop statute, G.L. c. 90, § 25, is unconstitutionally void-for-vagueness.

2(C). Whether, in interpreting art. 14, Massachusetts should follow other states in departing from the Supreme Court's *Atwater* decision, which validates statutorily-authorized arrests for non-jailable misdemeanors punishable only by fine, *per se*, without any reasonableness consideration.

2(D). Whether art. 14 bars pretextual *arrests*.

Trial issue

3. Whether the trial judge erred in denying Mr. Arias' request to interview a juror whose post-verdict letter raised the possibility that statements reflecting bias based on disability infected deliberations.

ARGUMENT

I. This Court should – for the first time – establish parameters for analyzing whether an officer’s delay in initiating a traffic stop violates art. 14.

The motion judge wrestled with Mr. Arias’ argument that the officers’ delay in addressing the alleged March 27 traffic infraction rendered the March 28 stop unreasonable. At the hearing, he asked if the Commonwealth knew of a case on point. (T4/134). He ultimately rejected Mr. Arias’ claim, concluding: “[Mr. Arias] cites no authority for his argument that a motor vehicle stop may not be based on a traffic violation witnessed the previous day. I have been unable to locate any reported cases in Massachusetts on the issue one way or the other.” (R2.45-46;A.63-64). On this score, the judge was correct: neither this Court, nor the Appeals Court, have decided a case on the issue. Thus, under art. 14, Mr. Arias’ case is one of first impression.

Following the denial of Mr. Arias’ suppression motion, this Court decided *Commonwealth v. Daveiga*, 489 Mass. 342, 350 (2022). The *Daveiga* Court considered whether officers acted reasonably when, having already addressed a traffic violation, they reinitiated the encounter by conducting a traffic stop. *Id.* at 351-354. In *dicta*, the SJC set forth other circumstances that would mark the end of the government’s interest in ensuring traffic safety, identifying the precise

issue raised in Mr. Arias' case: "when an officer observes a traffic violation but unreasonably delays initiating a traffic stop on the basis of that violation." *Id.* at 351, 353, citing favorably to *United States v. Mendonca*, 682 F. Supp. 2d 98 (D. Mass. 2010).

Daveiga adds weight to Mr. Arias' contention that the delay rendered his stop unreasonable. However, because the facts of *Daveiga* did not raise the delay issue, it remains true that – as the motion judge here recognized – the issue is novel under art. 14. The issue, in other words, is ripe for review.

Moreover, this is a particularly appropriate case to decide the issue: the delay – one full day – was significant; and, as the judge found, the previous day's traffic infraction was not even the "real reason" for the eventual stop, just a pretext. *See Mendonca*, 682 F.Supp.2d at 104 (one-hour delay was unreasonable; a completed traffic infraction "cannot hang over a suspect indefinitely until a time at which ... officers believe warrants a pretextual stop").

To set forth art. 14's parameters for evaluating what may constitute an unreasonable delay in the initiation of a traffic stop, this Court should allow this petition for direct review.

II. On a record with an express finding of pretext, this Court should finally, and specifically, determine whether art. 14 permits investigatory stops based on pretext.

Concurring in *Long*, Justice Budd concluded: “the [SJC] previously has not examined the constitutionality of pretextual stops from an art. 14 perspective.” *Commonwealth v. Long*, 485 Mass. 711, 748 (2020) (Budd, J., concurring). “[D]espite the fact that [*Commonwealth v. Santana*, 420 Mass. 205 (1995)] often is cited for the proposition that pretextual stops are valid ... there is no case of which I am aware that specifically has considered whether using pretext to make an investigatory stop without reasonable suspicion of the crime sought to be investigated is a violation of art. 14, and if not, why not.” *Id.* at 749 (Budd, J., concurring).

In contrast to *Santana* – where, as Justice Budd points out, “pretext was discussed only briefly and was not truly at issue,” *id.* (Budd, J., concurring) – the pretextual nature of the stop here is undeniable. The judge here made the explicit, factually-supported finding that the traffic infraction was just a pretext, and that the “real reason” that Mr. Arias was stopped was for investigatory purposes. (R2.44;A.62).

On a record with an express finding of pretext, this Court should finally, fully, and specifically address whether pretextual stops violate art. 14, and conclude that fictional reasons do not suffice under art. 14’s reasonableness

standard.

III. This Court should decide the novel *Atwater*-under-art. 14 issue: whether our state constitution imposes reasonableness limitations on statutorily-authorized arrests for non-jailable misdemeanors.

Following the stop, Mr. Arias was forcibly removed from his vehicle and patfrisked. The judge upheld these police actions by concluding *first* that Mr. Arias had failed to stop for police, *see* G.L. c. 90, § 25, and *second*, that officers had statutory authority to conduct a valid arrest for that offense. In reaching this conclusion, the judge failed to conduct any analysis of whether the arrest was *reasonable* from a *constitutional* perspective. Instead, he based his decision solely on G.L. c. 90, § 21, which purports to authorize arrests for motorists who fail to stop for police.

A tension arises. On the one hand, § 21 purports to authorize Mr. Arias' arrest. On the other hand, failure to stop is a non-jailable, fine-only offense, *see* G.L. c. 90, § 25, and Mr. Arias' response to the officer's lights and sirens was hardly egregious: he travelled a mere 0.1 miles, slowly, and then attempted to turn onto a side street – which was sensible given the heavy traffic conditions on single-lane Market Street.

Whether the judge was required to conduct a reasonable analysis is a novel question under art. 14. The issue was

decided on federal grounds in *Atwater v. City of Lago Vista*, 532 U.S. 318, 321-323 (2001), which involved a non-jailable, fine-only Texas seatbelt law made arrestable by statute. In a 5-4 decision, the Supreme Court determined that, generally, “[i]f an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender”; no constitutional reasonableness determination is required. *Id.* at 354.

However, numerous states – including Louisiana, Minnesota, Montana, Nevada, New Mexico, and Ohio⁸ – have rejected *Atwater*’s holding in interpreting their own state constitutions.

There is good reason for this Court to follow suit. The *Atwater* decision rested largely on the common law’s lack of a “breach of the peace” requirement for misdemeanor arrests. *Id.* at 324-346. But *Massachusetts* common law *does* have a “breach of peace” requirement, see *Lunn v. Commonwealth*, 477 Mass. 517, 529-530 & n.20 (2017) (expressly contrasting *Atwater*), suggesting that a departure from *Atwater* under art. 14 would be appropriate. Moreover, as the four dissenting

⁸ See *State v. Harris*, 916 So.2d 284 (La. Ct. App. 2005); *State v. Askerooth*, 681 N.W.2d 353 (Minn. 2004); *State v. Bauer*, 307 Mont. 105 (2001); *State v. Bayard*, 119 Nev. 241 (2003); *State v. Rodarte*, 138 N.M. 668 (2005); *State v. Jones*, 88 Ohio St.3d 430 (2000).

justices in *Atwater* explained, full custodial arrests exact an “obvious toll” on an individual’s “liberty and privacy,” while governmental interests in effectuating an arrest for non-jailable misdemeanors may be exceedingly limited. *Atwater*, 532 U.S. at 364, 368-369 (O’Connor, J., dissenting).

This Court should decide the novel question and hold that art. 14 does not tolerate unreasonable arrests for non-jailable misdemeanors.

IV. The failure to stop statute, G.L. c. 90, § 25, requires SJC attention to decide whether it is void-for-vagueness and clarify what conduct it criminalizes.

To avoid unconstitutional vagueness, a criminal statute must “[1] define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and [2] in a manner that does not encourage arbitrary enforcement.” *Commonwealth v. Williams*, 395 Mass. 302, 304 (1985), citing *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). The failure to stop statute, G.L. c. 90, § 25 – which criminalizes drivers who “refuse or neglect to stop when signalled to stop by any police officer” – fails on both fronts.

All motorists require *some time* to appropriately pull over for police. Yet, § 25 does not recognize this practical reality, and contains no standard for determining when a

motorist has “neglect[ed]” to stop for police such that his driving becomes *criminal*. See, e.g., *Williams*, 395 Mass. at 306 (Boston city ordinance did not establish when “sauntering and loitering ... escalates to obstructing travelers”).

In turn, § 25’s standardless demand that one must not “neglect” to stop for police entrusts lawmaking to the “moment-to-moment judgment of police officers.” *Kolender*, 461 U.S. at 360. Therefore, on identical, *de minimis* facts, one driver might merely get cited for the underlying traffic infraction, while another gets arrested for failure to stop. Section 25 thus extends the problems associated with discretionary traffic stops, see *Long*, 485 Mass. at 739 (Budd, J., concurring) to post-stop *arrests*, permitting arbitrariness and discrimination to flourish. This Court should address § 25’s vagueness problem.

A review of the motion judge’s conclusion that Mr. Arias’ driving amounted to failure to stop would also provide guidance to lower courts and curtail police overreach. The Commonwealth agreed that Mr. Arias’ driving – travelling slowly for 0.1 miles and attempting to turn off the congested one-lane road – was “a very small incident.” (T4/135). Nevertheless, the motion judge determined that these facts established probable cause of the *criminal* – and ostensibly *arrestable* – offense of failure to stop. Without guardrails limiting the reach of § 25, Massachusetts motorists will

remain unprotected from the whims of a police officer who decides to turn a minor driving event into a full-blown custodial arrest.

V. Whether pretextual *arrests* violate art. 14 – an issue of first impression – should be decided by this Court.

Although the Commonwealth sought to justify the officers’ post-stop actions based on Mr. Arias’ alleged failure to stop, this was undoubtably a pretext: the officers never arrested Mr. Arias for failure to stop; they did not request his license and registration; and they never charged or cited Mr. Arias for failing to stop. Rather, the officers’ conduct – which included stopping the vehicle “for a drug investigation” and immediately calling for a drug-sniffing dog – indicates that the true purpose of the officers’ post-stop actions (much like their decision to stop Mr. Arias) was investigatory.

Whether pretextual *arrests* are authorized under art. 14 is an open question: no Massachusetts appellate court has squarely tackled the issue. In *Arkansas v. Sullivan*, 532 U.S. 769, 770-772 (2001), the Supreme Court determined that, as a matter of federal constitutional law, pretextual arrests are not impermissible. Yet, other states have ruled pretextual arrests unlawful on state constitutional grounds. *See State v. Sullivan*, 348 Ark. 647, 655 (2002); *State v. Ladson*, 138 Wash. 2d 343, 353 (1999). The Arkansas Supreme Court did so – on

remand, in *Sullivan* – notwithstanding the *lawfulness* of pretextual stops under its state constitution, based on “the different level of police intrusion involved with a traffic stop as opposed to a full custodial arrest.” *Sullivan*, 348 Ark. at 652, n.1.

The pretextual arrest issue is an important one. Consider the facts in the instant case. Officers lacking reasonable suspicion or probable cause of a drug crime were nonetheless enabled to conduct a full-blown arrest and investigatory search based entirely on a pretext: Mr. Arias’ *de minimis* response to the traffic stop, which ostensibly violated the non-jailable, fine-only failure to stop statute. In essence, an investigatory search was permitted based on a hunch. See *Commonwealth v. Sweeting-Bailey*, 488 Mass. 741, 776 (2021) (Gaziano, J., dissenting) (justifying investigatory search based on a hunch’s “random and arbitrary nature” is inconsistent “with a free and ordered society”).

On direct review, this Court should address the novel question of pretextual arrests under art. 14.

VI. This case presents the opportunity to address potential juror bias based on disability.

Three hours post-verdict, a juror submitted a letter to the Court stating, *inter alia*, that they have autism spectrum disorder and were pressured by other jurors. The trial judge denied Mr. Arias’ request for a mistrial or, alternatively, a

voir dire of the juror. This case thus raises the question of whether bias based on disability would constitute “other improper bias” capable of infringing upon a defendant’s right to a fair trial. *Commonwealth v. Ralph R.*, 490 Mass. 770, 780 (2022).

CONCLUSION

This Court should grant Mr. Arias’ application for direct appellate review to decide novel and significant issues concerning police authority to stop and arrest drivers in Massachusetts.

Respectfully submitted,

/s/ John P. Warren
John P. Warren, BBO #685597
Law Office of John P. Warren
132 Lincoln Street, Suite 5L
Boston, MA 02111
(617) 383-4482
john@johnpwarrenlaw.com

Date: June 3, 2025

ADDENDUM

Table of Contents

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Judge’s memorandum and order on motion to suppress (Krupp, J.)	59
Judge’s order denying motion to vacate and declare Mistrial (Budreau, J.)	69

1984CR00479 Commonwealth vs. Arias, Jose

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 08/15/2019
- DCM Track:
- B - Complex
- Initiating Action:
- COCAINE, TRAFFICKING IN 18 GRAMS OR MORE, LESS THAN 36 GRAMS c94C §32E(b)
- Status Date:
- 10/12/2023
- Case Judge:
- Budreau, Hon. James
- Next Event:
-

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

Party Information

Suffolk County District Attorney
- Prosecutor

[Alias](#)

Party Attorney

- Attorney
- Hartley, Esq., Brooke
- Bar Code
- 704119
- Address
- 1 Bulfinch Place
- Boston, MA 02114
- Phone Number
- (203)560-9906
- Attorney
- Lavery, Esq., Thomas J
- Bar Code
- 703604
- Address
- Suffolk County District Attorney Office
- ONE BULFINCH PLACE
- BOSTON, MA 02114
- Phone Number
- (617)619-4000
- Attorney
- McGowan, Esq., David D
- Bar Code
- 670041
- Address
- Suffolk County District Attorney's Office
- One Bulfinch Place
- Boston, MA 02114
- Phone Number
- (617)619-4000

[More Party Information](#)

Arias, Jose
- Defendant

[Alias](#)

Party Attorney

- Attorney
- Simmons, Esq., Patrick H
- Bar Code
- 691361
- Address
- Committee for Public Counsel Services
- 75 Federal St
- 6th Floor
- Boston, MA 02110
- Phone Number
- (617)209-5500

- Attorney
- Warren, Esq., John
- Bar Code
- 685597
- Address
- Law Office of John P. Warren, P.C.
132 Lincoln St
Suite 5L
Boston, MA 02111
- Phone Number
- (617)383-4482

[More Party Information](#)

BOSTON POLICE DEPARTMENT

- Other interested party

Alias

Party Attorney

- Attorney
- Rizzo, Esq., Anthony John
- Bar Code
- 694865
- Address
- Boston Police Department
Boston Police Department
One Schroeder Plaza
Boston, MA 02120
- Phone Number
- (617)343-4296

[More Party Information](#)

Criminal Justice Information Service

- Other interested party

Alias

Party Attorney

- Attorney
- Koulouris, Esq., Agapi
- Bar Code
- 663886
- Address
- Dept. of Criminal Justice Information Service
200 Arlington St
Suite 2200
Chelsea, MA 02150
- Phone Number
- (617)660-4654

[More Party Information](#)

Party Charge Information

- **Arias, Jose**
- - Defendant
- Charge # 1:
94C/32E/C-3 - Felony COCAINE, TRAFFICKING IN, 100 GRAMS OR MORE, LESS THAN 200 GRAMS c94C §32E(b)
- Original Charge
- 94C/32E/D-3 COCAINE, TRAFFICKING IN, 200 GRAMS OR MORE c94C §32E(b) (Felony)
- Indicted Charge
- Amended Charge
- 94C/32E/C-3 COCAINE, TRAFFICKING IN, 100 GRAMS OR MORE, LESS THAN 200 GRAMS c94C §32E(b) (Felony)

Charge Disposition

Disposition Date
Disposition
03/14/2024
Guilty Verdict - Lesser Included

Events

Date	Session	Location	Type	Event Judge	Result
09/10/2019 09:00 AM	Magistrate's Session		Arraignment	Medeiros, Lisa B	Held as Scheduled
10/16/2019 09:30 AM	Magistrate's Session	BOS-7th FL, CR 705 (SC)	Pre-Trial Conference	Curley, Edward J	Held as Scheduled

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
12/10/2019 09:30 AM	Criminal 1		Motion Hearing	Cannone, Hon. Beverly J	Not Held
12/10/2019 09:30 AM	SDP-Unified Session		Motion Hearing	Doolin, Hon. Michael	Held as Scheduled
01/03/2020 09:00 AM	SDP-Unified Session		Motion Hearing	Doolin, Hon. Michael	Held as Scheduled
01/13/2020 02:00 PM	Criminal 5	BOS-8th FL, CR 817 (SC)	Pre-Trial Hearing		Held as Scheduled
01/27/2020 02:00 PM	Criminal 5		Motion Hearing	Locke, Hon. Jeffrey A	Held as Scheduled
05/20/2020 02:00 PM	Criminal 5	BOS-8th FL, CR 817 (SC)	Final Pre-Trial Conference		Canceled
06/01/2020 09:00 AM	Criminal 5	BOS-8th FL, CR 817 (SC)	Jury Trial		Canceled
06/01/2020 12:00 PM	Criminal 5		Conference to Review Status	Ricciuti, Hon. Michael D	Held as Scheduled
06/18/2020 09:00 AM	Criminal 5		Conference to Review Status	Ricciuti, Hon. Michael D	Canceled
06/30/2020 11:00 AM	Criminal 5		Motion Hearing	Ricciuti, Hon. Michael D	Rescheduled
06/30/2020 02:00 PM	Criminal 5		Evidentiary Hearing on Suppression	Ricciuti, Hon. Michael D	Canceled
07/07/2020 09:30 AM	Criminal 1		Motion Hearing	Ricciuti, Hon. Michael D	Rescheduled
07/28/2020 09:30 AM	Criminal 5		Conference to Review Status	Ames, Hon. Mary K	Rescheduled
08/10/2020 10:30 AM	Criminal 5		Conference to Review Status	Ames, Hon. Mary K	Held as Scheduled
10/14/2020 10:30 AM	Criminal 5		Evidentiary Hearing on Suppression		Not Held
01/13/2021 09:30 AM	Criminal 5		Conference to Review Status	Krupp, Hon. Peter B	Held as Scheduled
01/13/2021 11:00 AM	Criminal 5		Evidentiary Hearing on Suppression		Rescheduled
03/03/2021 12:00 PM	Criminal 5		Evidentiary Hearing on Suppression	Krupp, Hon. Peter B	Rescheduled
04/27/2021 10:00 AM	Criminal 5	BOS-8th FL, CR 817 (SC)	Evidentiary Hearing on Suppression		Held - Under advisement
05/20/2021 12:30 PM	Criminal 5		Conference to Review Status	Krupp, Hon. Peter B	Held via Video/Phone
06/24/2021 09:00 AM	Criminal 5		Conference to Review Status	Krupp, Hon. Peter B	Held via Video/Phone
08/10/2021 10:00 AM	Criminal 5		Trial Assignment Conference	Ames, Hon. Mary K	Rescheduled
09/27/2021 10:00 AM	Criminal 5	BOS-8th FL, CR 817 (SC)	Trial Assignment Conference	Ames, Hon. Mary K	Held as Scheduled
11/23/2021 02:00 PM	Criminal 5	BOS-8th FL, CR 817 (SC)	Conference to Review Status	Ames, Hon. Mary K	Rescheduled
01/04/2022 02:00 PM	Criminal 5	BOS-8th FL, CR 817 (SC)	Lobby Conference	Wall, Hon. Joshua	Held as Scheduled
01/11/2022 02:00 PM	Criminal 5	BOS-8th FL, CR 817 (SC)	Final Pre-Trial Conference	Wall, Hon. Joshua	Canceled
01/19/2022 02:00 PM	Criminal 5	BOS-8th FL, CR 817 (SC)	Trial Assignment Conference	Wall, Hon. Joshua	Held as Scheduled
01/25/2022 09:00 AM	Criminal 5	BOS-8th FL, CR 817 (SC)	Jury Trial	Wall, Hon. Joshua	Canceled
03/29/2022 10:00 AM	Criminal 5	BOS-8th FL, CR 817 (SC)	Motion Hearing	Wall, Hon. Joshua	Held as Scheduled

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
05/12/2022 09:00 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Hearing for Appearance / Appointment of Counsel	Doolin, Hon. Michael	Held as Scheduled
05/24/2022 02:00 PM	Criminal 5	BOS-8th FL, CR 817 (SC)	Final Pre-Trial Conference	Cowin, Hon. Jackie	Canceled
05/31/2022 09:00 AM	Criminal 5	BOS-8th FL, CR 817 (SC)	Jury Trial	Cowin, Hon. Jackie	Canceled
06/23/2022 09:00 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Conference to Review Status	Doolin, Hon. Michael	Held as Scheduled
07/26/2022 09:00 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Lobby Conference	Doolin, Hon. Michael	Held as Scheduled
08/22/2022 09:00 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Lobby Conference	Doolin, Hon. Michael	Not Held
09/26/2022 09:00 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Lobby Conference	Doolin, Hon. Michael	Held as Scheduled
12/22/2022 03:00 PM	Criminal 5		Final Pre-Trial Conference	Ellis, Hon. Sarah Weyland	Not Held
01/04/2023 02:00 PM	Criminal 5	BOS-8th FL, CR 817 (SC)	Final Pre-Trial Conference	Lang, Hon. James F	Canceled
01/09/2023 09:00 AM	Criminal 5	BOS-8th FL, CR 817 (SC)	Jury Trial	Lang, Hon. James F	Canceled
01/24/2023 02:00 PM	Criminal 5		Trial Assignment Conference	Lang, Hon. James F	Held as Scheduled
08/23/2023 02:00 PM	Criminal 5		Final Pre-Trial Conference	Doolin, Hon. Michael	Rescheduled
08/30/2023 02:00 PM	Criminal 5		Final Pre-Trial Conference	Doolin, Hon. Michael	Held as Scheduled
09/11/2023 09:00 AM	Criminal 5		Jury Trial	Doolin, Hon. Michael	Rescheduled
09/12/2023 10:30 AM	Criminal 5		Jury Trial	Doolin, Hon. Michael	Held as Scheduled
09/13/2023 09:00 AM	Criminal 5		Jury Trial	Doolin, Hon. Michael	Held as Scheduled
09/14/2023 09:00 AM	Criminal 5		Jury Trial	Doolin, Hon. Michael	Held as Scheduled
09/15/2023 09:00 AM	Criminal 5		Jury Trial	Doolin, Hon. Michael	Held as Scheduled
09/20/2023 02:00 PM	Criminal 5		Hearing for Appearance / Appointment of Counsel	Doolin, Hon. Michael	Held as Scheduled
10/04/2023 02:00 PM	Criminal 5		Conference to Review Status	Campo, Hon. Anthony M.	Not Held
10/12/2023 09:00 AM	Magistrate's Session		Hearing for Warrant Removal	Bryan, Abigail	Held as Scheduled
11/06/2023 09:00 AM	Magistrate's Session		Conference to Review Status	Curley, Edward J	Held as Scheduled
12/20/2023 02:00 PM	Criminal 5		Conference to Review Status	Campo, Hon. Anthony M.	Held as Scheduled
01/31/2024 02:00 PM	Criminal 5	BOS-8th FL, CR 817 (SC)	Conference to Review Status	Campo, Hon. Anthony M.	Rescheduled
02/13/2024 02:00 PM	Criminal 5	BOS-8th FL, CR 817 (SC)	Conference to Review Status	Campo, Hon. Anthony M.	Rescheduled
02/15/2024 10:00 AM	Criminal 5	BOS-8th FL, CR 817 (SC)	Conference to Review Status	Campo, Hon. Anthony M.	Not Held
02/28/2024 02:00 PM	Criminal 5	BOS-8th FL, CR 817 (SC)	Motion Hearing	Campo, Hon. Anthony M.	Rescheduled
03/05/2024 02:00 PM	Criminal 5	BOS-8th FL, CR 817 (SC)	Final Pre-Trial Conference	Campo, Hon. Anthony M.	Held as Scheduled
03/08/2024 02:00 PM	Criminal 4	BOS-8th FL, CR 815 (SC)	Conference to Review Status	Budreau, Hon. James	Held as Scheduled

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
03/11/2024 09:00 AM	Criminal 4	BOS-8th FL, CR 815 (SC)	Jury Trial	Budreau, Hon. James	Held as Scheduled
03/11/2024 09:00 AM	Criminal 5	BOS-8th FL, CR 817 (SC)	Jury Trial	Campo, Hon. Anthony M.	Rescheduled
03/12/2024 09:00 AM	Criminal 4	BOS-8th FL, CR 815 (SC)	Jury Trial	Budreau, Hon. James	Held as Scheduled
03/13/2024 09:00 AM	Criminal 4	BOS-8th FL, CR 815 (SC)	Jury Trial	Budreau, Hon. James	Held as Scheduled
03/14/2024 09:00 AM	Criminal 4	BOS-8th FL, CR 815 (SC)	Jury Trial	Budreau, Hon. James	Held as Scheduled
03/15/2024 10:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Motion Hearing	Doolin, Hon. Michael	Held as Scheduled
03/25/2024 02:00 PM	Criminal 4	BOS-8th FL, CR 815 (SC)	Hearing for Sentence Imposition	Budreau, Hon. James	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	09/10/2019	01/23/2020	135	01/13/2020
Final Pre-Trial Conference	09/10/2019	05/22/2020	255	01/05/2022
Case Disposition	09/10/2019	06/05/2020	269	03/14/2024
Under Advisement	04/27/2021	05/27/2021	30	06/17/2021

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/15/2019	Attorney appearance On this date 08/15/2019 Leson, Esq., Ian M added for Suffolk County District Attorney		
08/15/2019	Indictment(s) returned	1	
08/15/2019	Commonwealth 's Motion for issuance of a summons (Filed)	2	
08/15/2019	Endorsement on Motion for issuance of a summons , (#2.0): ALLOWED		
08/15/2019	Issued this date: Summons to Defendant Sent On: 08/15/2019 13:45:44		
09/10/2019	Interpreter present : Spanish Judge: Curley, Edward J		
09/10/2019	Attorney appearance On this date Veronica J White, Esq. added as Private Counsel for Defendant Jose L Arias		
09/10/2019	Defendant arraigned before Court.		
09/10/2019	Defendant waives reading of indictment		
09/10/2019	Plea of not guilty entered on all charges.		
09/10/2019	Court inquires of Commonwealth if abuse, as defined by G.L. c. 209A, § 1, is alleged to have occurred immediately prior to or in connection with the charged offense(s).		
09/10/2019	Court finds NO abuse is alleged in connection with the charged offense. G.L. c. 276, § 56A.		
09/10/2019	Bail set at \$200,000.00 Surety, \$20,000.00 Cash. Surrender Passport prior to release and do not apply for a new one Set without prejudice		
09/10/2019	Bail warnings read		
09/10/2019	Defendant informed of right to request a drug exam. G.L. c. 111E, § 10		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
09/10/2019	Issued on this date: Mittimus in Lieu of Bail Sent On: 09/10/2019 11:30:28	3	 Image
09/10/2019	Conditions of release on bail: Other Special Condition 1.) Surrender passport prior to release and do not apply for a new one Judge: Curley, Edward J		
09/10/2019	Finding and Order on Bail: Judge: Curley, Edward J	4	 Image
09/10/2019	Veronica J White, Esq.'s Notice of appearance of counsel filed	5	 Image
09/10/2019	Ian M Leson, Esq.'s Notice of appearance of counsel filed	6	 Image
09/10/2019	Commonwealth 's Notice of discovery (I) filed	7	 Image
09/10/2019	Commonwealth 's Statement of the case filed	8	 Image
09/10/2019	Case assigned to: DCM Track B - Complex was added on 09/10/2019		
09/10/2019	Defendant comes into court. Arraignment held as scheduled. Track B case set by agreement: 1.) Pre-Trial Conference scheduled for 10/16/19 at 9:30 AM in the Magistrate Session (CtRm 705) (JAIL LIST) (Spanish Interpreter requested) 2.) Pre-Trial Hearing scheduled for 1/13/20 at 2:00 PM in Criminal 5 (CtRm 817) 3.) Final Pre-Trial Conference scheduled for 5/20/20 at 2:00 PM in Criminal 5 (CtRm 817) 4.) Jury Trial scheduled for 6/1/20 at 9:00 AM in Criminal 5 (CtRm 817) Curley, MAG - M. Pierce, ACM - I. Leson, ADA - V. White, Atty - 10:53 AM FTR		
09/10/2019	Docket Note: Passport surrendered this day to the Criminal Clerk's Office		
09/10/2019	The following form was generated: Release from Custody Order Sent On: 09/10/2019 15:05:31	9	 Image
10/16/2019	Interpreter present : Spanish		
10/16/2019	Spanish Interpreter requested.		
10/16/2019	Pre-trial conference report filed	10	 Image
10/16/2019	Commonwealth Madeline A Stern, Esq.'s Notice of Appearance of Counsel (filed)	11	 Image
10/16/2019	Attorney appearance On this date Madeline A Stern, Esq. added as Attorney for the Commonwealth for Prosecutor Suffolk County District Attorney		
10/16/2019	Defendant 's Motion for discovery of mobile Date terminal information with affidavit in support thereof (Filed)	12	 Image
10/16/2019	Defendant 's Submission of Discovery Motion (Filed)	13	 Image
10/16/2019	Defendant comes into court, Pre-Trial Conference, Held Case continued by agreement to 12/10/2019 RE: Motion Hearing in CTRM 704 at 9:30am M. Fentress, MAG M. Regan, ACM M. Stern, ADA V. White, Atty FTR		
10/16/2019	Attorney appearance On this date Ian M Leson, Esq. dismissed/withdrawn for Prosecutor Suffolk County District Attorney		
12/10/2019	Defendant not in court. Motion Hearing not held as scheduled, transferred to another session. Case referred to Courtroom 914		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Cannone, J. - J. Pardi, ACM - M. Stern, ADA - V. White, Atty - FTR		
12/10/2019	Commonwealth 's Response to defendant's omnibus discovery motion (first response) filed	14	 Image
12/10/2019	Defendant comes into Court. Spanish interpreter present and sworn. Hearing Re: Discovery motion held before Doolin, J Case cont by agreement to 1/3/20 at 9:00 am for further hearing Re: Discovery Ctrm 914. Spanish interpreter requested Both parties to file a brief by 12/17/19. Doolin, J., M. Stern, ADA., V. White, Atty., FTR		 Image
12/17/2019	Defendant 's Objection to certain items requested in defendants omnibus motion, filed	15	 Image
12/17/2019	Defendant 's Motion for disclosure of identity of unnamed police detective location of drug location and identity of know drug addict and affidavit in support of, filed	16	 Image
12/17/2019	Defendant 's Motion to suppress physical evidence and statements and affidavit, filed	17	 Image
01/03/2020	Defendant comes into Court. Spanish interpreter present and sworn. Further hearing held regarding Paper #16 Defendants motion for disclosure if unnamed police detective location of drug location and identity of known drug addict. After hearing motion denied without prejudice based upon representations made by commonwealth. Spanish interpreter requested for 1/13. Doolin, J. Case has next date of 1/13/2020. Doolin, J., M. Stern, ADA., V. White, Atty., FTR		 Image
01/13/2020	Defendant comes into court. Spanish language interpreter was requested for today's hearing, however the presence of the interpreter was waived by defense counsel at the time the matter was called. Pre-Trial Hearing held before Locke, J. Continued by agreement to 1/27/2020 for Hearing Re: Discovery and Rule 17 Motions at 2:00PM in Courtroom 817. Per Order of the Court, Commonwealth must provide notice of hearing on 1/27/2020 to 3rd Parties. Hon. Jeffrey A Locke, Presiding Appeared: M. Stern, ADA - V. White, Atty. - FTR (2:45PM) Staff: Rebeca Figueroa, Assistant Clerk Magistrate		
01/13/2020	Spanish language interpreter requested for Motion Hearing on 1/27/2020 at 2:00PM in Courtroom 817.		
01/13/2020	Commonwealth 's Notice of Discovery, Second - Filed	18	
01/13/2020	Commonwealth 's Certificate of Compliance Regarding Pre-Trial Discovery - Filed	19	
01/13/2020	Defendant 's Motion for Discovery with Affidavit in Support, Exhibit A and Exhibit B - Filed	20	 Image
01/13/2020	Endorsement on Motion , Omnibus Discovery, (#13.0): Other action taken 1. ALLOWED 2. Moot per representation of ADA 3. Moot 4. ALLOWED as to trial witnesses or exculpatory witness 5. DENIED previously by Doolin, J. 6. DENIED previously by Doolin, J. 7. ALLOWED except as to initial detective disclosure 8. ALLOWED except as to initial detective disclosure 9. Moot 10. See R. 14 11. See R. 14 12. See R. 14 13. See R. 14 14. See R. 14 15. See R. 14 16. ALLOWED 17. See R. 14 18. ALLOWED - and March 27 19. ALLOWED 20. See R. 14 21. See R. 14 22. ALLOWED 23. See R. 14 24. ALLOWED 25. ALLOWED 26. DENIED		 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
01/24/2020	Defendant 's Motion for Discovery, Amended with affidavit, memorandum in support and incident report attached	21	 Image
01/27/2020	Defendant comes into court. Spanish Language Interpreter, Carla Crispin, is present and previously sworn. Hearing Re: Discovery Motions (P#12) and (P#21) held before Locke, J. Continued to previously scheduled date of 5/20/2020 for Final Pre-Trial Conference at 2:00PM in the Fifth Criminal Session, Courtroom 817. Hon. Jeffrey A Locke, Presiding Appeared: M. Stern, ADA - A. Rizzo, BPD Legal - A. Koulouris, Counsel CJIS - FTR (2:27PM, 3:25PM) Staff: Rebeca Figueroa, Assistant Clerk Magistrate		
01/27/2020	Endorsement on Motion for Discovery, Amended, (#21.0): DENIED 1/27/20 After hearing, DENIED. Defendant has not made a sufficient preliminary showing to overcome the presumption that Officer Nunez was acting in good faith and with non-discriminating intent. See Comm. v. Betances, 451 Mass 457, 461-62. Counsel's affidavit is shorn of any allegations relating to this officer (or his partner), and counsel's "supplementation" with a single police incident report (case no. 1162017477) is inapposite. The 2015 Fagan Report, so-called, relating to FIO's conducted between 2007-2010, is not, standing alone, sufficient to establish a likelihood of desperate race or ethnic-based profiling in traffic stops in 2019. Moreover, the Court questions whether counsel has a genuine good faith basis to assert a claim of racial or ethnic profiling where discovery shows that stop was, at least in part, motivated by a drug investigation. Locke, J. (Notice and copy to counsel of record via first class mail)		 Image
01/27/2020	Interpreter present Spanish Language - Carla Crispin		
01/27/2020	Attorney appearance On this date Anthony John Rizzo, Esq. added for Other interested party BOSTON POLICE DEPARTMENT		
01/27/2020	Opposition to paper #21.0 Amended Motion for Discovery filed by BOSTON POLICE DEPARTMENT The Boston Police Department's Opposition to "Defendant's Motion for Discovery of Racial Profiling Information" - Filed	22	
01/27/2020	Commonwealth 's Motion in Opposition to the Defendant's Motion for Discovery of Reports Filed January 13, 2020 and Defendant's Amended Motion for Discovery Filed January 24, 2020 - Filed	23	 Image
01/27/2020	Endorsement on Motion for Discovery of Mobile Date Terminal Information, (#12.0): ALLOWED 1/27/20 Allowed as to MDTI relating to named defendant, suspect vehicle, registered owner, or assigned license plate. Locke, J. (Copy and notice sent to counsel of record via first class mail)		 Image
01/27/2020	Attorney appearance On this date Agapi Koulouris, Esq. added for Other interested party Criminal Justice Information Service		
01/29/2020	The following form was generated re: Endorsement on Motion for Discovery, Amended, (#21.0): DENIED A Clerk's Notice was generated and sent to: Attorney: Veronica J White, Esq. Attorney: Madeline A Stern, Esq. Attorney: Anthony John Rizzo, Esq.		
01/29/2020	The following form was generated re: Endorsement on Motion for Discovery of Mobile Date Terminal Information, (#12.0): ALLOWED A Clerk's Notice was generated and sent to: Attorney: Veronica J White, Esq. Attorney: Madeline A Stern, Esq. Attorney: Anthony John Rizzo, Esq. Attorney: Agapi Koulouris, Esq.		
05/04/2020	Event Result:: Final Pre-Trial Conference scheduled on: 05/20/2020 02:00 PM Has been: Canceled For the following reason: By Court due to Covid-19 Staff: Rebeca Figueroa, Assistant Clerk Magistrate Michelle Pierce, Assistant Clerk		
05/28/2020	Event Result:: Jury Trial scheduled on: 06/01/2020 09:00 AM Has been: Canceled For the following reason: By Court due to Covid-19 Hon. Michael D Ricciuti, Presiding Staff:		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Rebeca Figueroa, Assistant Clerk Magistrate Michelle Pierce, Assistant Clerk		
06/01/2020	Defendant's presence waived by Court. Conference to Review Status of Discovery held before Ricciuti, J. Continued by Agreement to June 18, 2020 at 9:00AM for Conference to Review Status of Defendant's Waiver of Presence for Motion to Suppress Hearing and Discovery Compliance in Courtroom 817. Per Order of the Court: 1. Commonwealth must file its opposition to Defendant's Motion to Suppress on or before June 12, 2020. 2. Defense Counsel is to review Waiver of Presence with the Defendant. Hon. Michael D Ricciuti, Presiding Appeared: M. Stern, ADA (via telephone) - V. White, Atty. (via Zoom) - FTR (11:50AM) Staff: Rebeca Figueroa, Assistant Clerk Magistrate Michelle Pierce, Assistant Clerk		
06/01/2020	ORDER: Scheduling Order	24	
06/12/2020	Defendant 's Memorandum in Support of His Objection to Litigating Motion to Suppress Over Zoom - Filed	25	
06/15/2020	Commonwealth 's Motion to Continue - Filed	26	
06/16/2020	Event Result:: Conference to Review Status scheduled on: 06/18/2020 09:00 AM Has been: Canceled For the following reason: By Court prior to date Hon. Michael D Ricciuti, Presiding Staff: Rebeca Figueroa, Assistant Clerk Magistrate Michelle Pierce, Assistant Clerk		
06/16/2020	Event Result:: Evidentiary Hearing on Suppression scheduled on: 06/30/2020 02:00 PM Has been: Canceled For the following reason: By Court prior to date Hon. Michael D Ricciuti, Presiding Staff: Rebeca Figueroa, Assistant Clerk Magistrate Michelle Pierce, Assistant Clerk		
06/16/2020	Endorsement on Motion to Continue, (#26.0): ALLOWED		
06/26/2020	Event Result:: Motion Hearing scheduled on: 06/30/2020 11:00 AM Has been: Rescheduled For the following reason: Joint request of parties Hon. Michael D Ricciuti, Presiding Staff: Rebeca Figueroa, Assistant Clerk Magistrate Michelle Pierce, Assistant Clerk		
07/06/2020	ORDER: SCHEDULING ORDER RE: JULY 7, 2020 HEARING (Copy to Counsel of Record via Electronic Mail)	27	
07/06/2020	Event Result:: Motion Hearing scheduled on: 07/07/2020 09:30 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Michael D Ricciuti, Presiding Staff: Carol Mullen-Maguire, Assistant Clerk Magistrate James Pardi, Assistant Clerk Magistrate		
07/07/2020	Defendant 's Motion Seeking Leave to Supplement Objection to Litigating Motion to Suppress Over Zoom with Affidavit of Counsel - Filed	28	
07/28/2020	Event Result:: Conference to Review Status scheduled on: 07/28/2020 09:30 AM Has been: Rescheduled For the following reason: By Court due to Covid-19 Hon. Mary K Ames, Presiding Staff: Rebeca Figueroa, Assistant Clerk Magistrate		
08/10/2020	Defendant is present in court via Zoom videoconferencing.		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Spanish Language Interpreter, Sylvia Torres, is present and sworn. Conference to Review Status held before Ames, J. Continued by Agreement to October 14, 2020 for Evidentiary Hearing on Suppression at 12:00PM in Courtroom 817. Per Order of the Court: 1. Commonwealth's Opposition to Defendant's Motion to Suppress is due on or before August 17, 2020; 2. Defendant's Memorandum of Law in Support of Motion to Suppress is due on or before September 10, 2020. Hon. Mary K Ames, Presiding Appeared: M. Stern, ADA (via Zoom) - V. White, Atty. (via Zoom) - FTR (12:20PM) Staff: Rebeca Figueroa, Assistant Clerk Magistrate		
08/10/2020	Spanish Language Interpreter requested for Evidentiary Hearing on Suppression on October 14, 2020 at 12:00PM. Judge: Ames, Hon. Mary K		
08/11/2020	Rule 36 waived re: from August 10, 2020 until the Motion to Suppress Hearing. Judge: Ames, Hon. Mary K		
08/14/2020	Opposition to paper #17.0 Defendant 's Motion to suppress physical evidence and statements and affidavit filed by Suffolk County District Attorney- Commonwealth's Memorandum of Law in Opposition to Defendant's Motion to Suppress	29	 Image
09/10/2020	Defendant 's Memorandum in Support of Motion to Suppress with Exhibit 1 - Filed	30	 Image
10/14/2020	Non-custody Defendant present via Zoom. Evidentiary Hearing on Suppression not held at the request of the Defendant. Conference to Review Status held via Zoom. By agreement, this matter is continued to 1/13/2021 for Evidentiary Hearing on Motion to Suppress in Courtroom 817. Ames, J. - S. Pichardo, ACM - M. Stern, ADA (via Zoom) - V. White, Atty (Via Zoom) - FTR at 10:45AM		
01/07/2021	Defendant 's Motion to Order Electronic Copies of CJIS Materials with Affidavit of Counsel in Support - Filed	33	 Image
01/11/2021	's Assented to Motion to Convert Motion Date to Status Date, Agreed - Filed	34	 Image
01/11/2021	Endorsement on Motion to Convert Motion Date to Status Date, Agreed Motion to, (#34.0): ALLOWED 1/11/2021 ALLOWED. Date shall be converted to a status conference. Krupp, J.		 Image
01/11/2021	Event Result:: Evidentiary Hearing on Suppression scheduled on: 01/13/2021 11:00 AM Has been: Rescheduled For the following reason: Joint request of parties Hon. Peter B Krupp, Presiding Staff: Rebeca Figueroa, Assistant Clerk Magistrate		
01/12/2021	Business Records received from Records received from the Department of Criminal Justice Information Services (DCJIS). (Records stored on 14th Floor - Business Records)	35	
01/13/2021	Defendant is present in court via Zoom videoconferencing. Conference to Review Status held before Krupp, J. Continued by agreement to March 3, 2021 at 12:00 PM for Hearing Re: Motion to Suppress in Courtroom 817. Per Order of the Court: - All exhibits intended to be introduced at Motion to Suppress Hearing are due to the Court by February 26, 2021. Hon. Peter B Krupp, Presiding Appeared: M. Stern, ADA (via Zoom) - V. White, Atty. (via Zoom) - FTR (9:45 AM) Staff: Rebeca Figueroa, Assistant Clerk Magistrate		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
01/13/2021	Spanish Language Interpreter requested for March 3, 2021 at 12:00 PM.		
01/13/2021	Endorsement on Motion to Order Electronic Copies of CJIS Material, (#33.0): DENIED 1/13/21 DENIED as moot after hearing in open court. Krupp, J.		 Image
02/19/2021	Commonwealth, Defendant 's Motion (Agreed) to continue the Motion to Suppress date for an in-person hearing filed.	36	 Image
02/25/2021	Endorsement on Defendant 's Motion (Agreed) to continue the Motion to Suppress date for an in-person hearing, (#36.0): ALLOWED "The Hearing on 3/3/21 is Continued to 4/27/21 at 10AM for an in person Evidentiary hearing on Suppression motion" - Krupp J. (Atty V.White and ADA M.Stern notified with copy via email)		 Image
02/25/2021	Event Result:: Evidentiary Hearing on Suppression scheduled on: 03/03/2021 12:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Peter B Krupp, Presiding Staff: Rebeca Figueroa, Assistant Clerk Magistrate		
04/27/2021	Defendant is present in court. Spanish language interpreter Karla Crispin is present in court and is sworn. In-Person Evidentiary Hearing on Suppression (P#17) held before Krupp, J. After hearing, this matter is taken under advisement. Continued by agreement to May 20, 2021 at 12:30 PM for Conference to Review Status in Courtroom 817 (via Zoom). Per order of the court: - All supplemental filings shall be filed on or before April 30, 2021. Hon. Peter B Krupp, Presiding Appeared: M. Stern, ADA - V. White, Atty. - FTR (10:30 AM) Staff: Rebeca Figueroa, Assistant Clerk Magistrate		
04/27/2021	List of exhibits Evidentiary Hearing on Suppression before Krupp, J. April 27, 2021 in Courtroom 817.	37	 Image
04/27/2021	Witness list Evidentiary Hearing on Suppression before Krupp, J. April 27, 2021 in Courtroom 817. Applies To: Arias, Jose (Defendant)	38	
04/30/2021	General correspondence regarding Letter from Attorney Veronica White to Honorable Justice Peter Krupp dated April 30, 2021 regarding defendant's motion to suppress with attachments - Filed	39	 Image
04/30/2021	General correspondence regarding Letter from ADA Madeline Stern to Honorable Justice Peter Krupp dated April 30, 2021 regarding defendant's motion to suppress- Filed	40	 Image
05/20/2021	Defendant is present in court via Zoom videoconferencing. Spanish language interpreter is not present and Defense Counsel waives his/her presence. Conference to Review Status held before Krupp, J. Continued by agreement to June 24, 2021 at 9:00 AM for Further Conference to Review Status in Courtroom 817. - Spanish language interpreter requested. Hon. Peter B Krupp, Presiding Appeared: M. Stern, ADA (via Zoom) - V. White, Atty. (via Zoom) - FTR (12:38 PM) Staff: Rebeca Figueroa, Assistant Clerk Magistrate		
06/17/2021	MEMORANDUM & ORDER: On Defendant's Motion to Suppress Physical Evidence and Statements ORDER: Defendant's Motion to Suppress Physical Evidence and Statements (Docket #17) is ALLOWED only insofar as defendant's statements to Det. Miskell at the time of his stop and arrest shall be suppressed. The motion is otherwise DENIED. Krupp, J.	41	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	(Notice and copy to counsel of record via electronic and first class mail) Judge: Krupp, Hon. Peter B		
06/17/2021	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Veronica J White, Esq. White and Associates, P.C. 50 CONGRESS STREET Suite 615, Boston, MA 02109 Prosecutor, Attorney: Madeline A Stern, Esq. Suffolk County District Attorney's Office One Bulfinch Place, Boston, MA 02114		
06/17/2021	Endorsement on Motion to Suppress Physical Evidence and Statements, (#17.0): Other action taken 6/17/21 After hearing, ALLOWED in part and DENIED in part. See Memorandum and Order of same date. Krupp, J.		 Image
06/24/2021	Defendant is not present in court. Defendant's presence is waived with no objection by the Commonwealth. Spanish language interpreter, Alejandra Miranda-Naon is present via Zoom videoconferencing and is excused by the Court. Conference to Review Status held before Krupp, J. Continued by agreement to August 10, 2021 at 10:00 AM for Trial Assignment Conference via Zoom in Courtroom 817. Per Order of the Court: Defendant must appear via Zoom videoconference on August 10, 2021. Spanish language interpreter requested. Hon. Peter B Krupp, Presiding Appeared: M. Stern, ADA (via Zoom) - V. White, Atty. (via Zoom) - FTR (9:10 AM) Staff: Rebeca Figueroa, Assistant Clerk Magistrate		
07/13/2021	Defendant 's Notice of Appeal. Filed	42	 Image
08/02/2021	Event Result:: Trial Assignment Conference scheduled on: 08/10/2021 10:00 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Mary K Ames, Presiding Staff: Rourke Donnelly, Assistant Clerk Magistrate		
08/27/2021	Docket Note: Passport surrendered to the Criminal Clerk's Office on 09/10/19 - Notice regarding United States passport sent to the United States Department of State.		
09/27/2021	Scheduled: Event: Jury Trial Date: 01/25/2022 Time: 09:00 AM Result: Canceled		
09/27/2021	Event Result:: Trial Assignment Conference scheduled on: 09/27/2021 10:00 AM Has been: Held as Scheduled Hon. Mary K Ames, Presiding Staff: Rourke Donnelly, Assistant Clerk Magistrate Defendant comes into Court; Trial assignment held; matter continued by agreement to 11/23/21 for Status; 1/11/22 for FPTH; 1/25/22 for Jury Trial. Ames,J. - M.Stern, ADA - V.White, Attny -FTR		
11/22/2021	Event Result:: Conference to Review Status scheduled on: 11/23/2021 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Mary K Ames, Presiding Staff: Rourke Donnelly, Assistant Clerk Magistrate		
01/04/2022	Event Result:: Lobby Conference scheduled on: 01/04/2022 02:00 PM Has been: Held as Scheduled Hon. Joshua Wall, Presiding Staff: Rourke Donnelly, Assistant Clerk Magistrate Defendant present on Zoom; matter continued by agreement to 1/19/22 for Trial Assignment. Wall,J. - M.Stern, ADA - V.White, Attny - FTR		
01/19/2022	Event Result:: Trial Assignment Conference scheduled on: 01/19/2022 02:00 PM Has been: Held as Scheduled		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Hon. Joshua Wall, Presiding Staff: Rourke Donnelly, Assistant Clerk Magistrate Defendant appearing on Zoom; oral motion to reduce bail allowed; bail reduced from \$200,000 w/ surety or \$20,000 (previously posted) cash to \$150,000 w/surety or \$15,000 cash. No other terms changed. Matter continued by agreement to 5/24/22 for FPTH & 5/31/22 for Jury Trial. Wall,J. - M.Stern, ADA - V.White, Attny - FTR @ 11:00AM		
01/19/2022	Scheduled: Event: Jury Trial Date: 05/31/2022 Time: 09:00 AM Result: Canceled		
03/04/2022	Defendant 's Motion to Withdraw, filed	43	
03/29/2022	Event Result:: Jury Trial scheduled on: 05/31/2022 09:00 AM Has been: Canceled For the following reason: Request of Defendant Hon. Joshua Wall, Presiding Staff: Rourke Donnelly, Assistant Clerk Magistrate		Image
03/29/2022	Event Result:: Motion Hearing scheduled on: 03/29/2022 10:00 AM Has been: Held as Scheduled Hon. Joshua Wall, Presiding Staff: Rourke Donnelly, Assistant Clerk Magistrate Defendant comes into Court; Attorney Veronica White's motion to withdraw allowed; FPTH & Trial date canceled; matter continued to 5/12/22 for Appointment of Counsel in 1st session. Wall,J. - R.Stephens, for M.Stern, ADA - V.White, Attny - FTR		
03/29/2022	Endorsement on Motion to Withdraw, (#43.0): ALLOWED After hearing; defendant must appear at his next date with a new lawyer or on that date be evaluated for indigency. Wall,J. Judge: Wall, Hon. Joshua		 Image
05/12/2022	Defendant came into court. Hearing re:Counsel Held. Case continued by agreement to 6/23/22 for Conference to Review Status Re: Counsel in CTRM 704 First Session at 9am. P. Davenport Appointed. No Legal Counsel Fee. Event Result:: Hearing for Appearance / Appointment of Counsel scheduled on: 05/12/2022 09:00 AM Has been: Held as Scheduled Hon. Michael Doolin, Presiding Staff: Constance Goll, Assistant Clerk Magistrate James Pardi, Assistant Clerk Magistrate M. Stern, ADA P. Davenport, ATTY FTR: 10:15AM		
05/12/2022	Attorney appearance On this date Paul J Davenport, Esq. added as Appointed - Indigent Defendant for Defendant Jose Arias		
05/12/2022	Findings and Order of Statutory Fees Judge: Doolin, Hon. Michael	44	 Image
05/12/2022	Attorney appearance On this date Veronica J White, Esq. dismissed/withdrawn as Private Counsel for Defendant Jose Arias		
05/12/2022	Appointment made for the purpose of Case in Chief by Judge Hon. Robert L Ullmann.		
06/23/2022	Defendant Comes into Court. Spanish Interpreter Present. Case Continued by Agreement to 07/26/2022 at 9:00am re: Lobby Conference (Ctrm 704)(Interpreter Requested) Attorney Paul Davenport Appointed on 05/12/2022. Event Result:: Conference to Review Status scheduled on: 06/23/2022 09:00 AM Has been: Held as Scheduled Hon. Robert L Ullmann, Presiding		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Staff: James Pardi, Assistant Clerk Magistrate Mary Regan, Assistant Clerk Magistrate M. Stern , ADA P. Davenport, Atty. FTR		
07/26/2022	Defendant came to court. Lobby Conference Held. Spanish Int present Hearing Re: Counsel Held. Deft Pro-Se Oral Motion Re: Counsel Denied. Case continued by agreement to 8/22/22 Lobby Conference/ Trial Assignment at 9am. Spanish Int Req Event Result:: Lobby Conference scheduled on: 07/26/2022 09:00 AM Has been: Held as Scheduled Hon. Michael Doolin, Presiding Staff: Michelle Pierce, Deputy Assistant Clerk Magistrate James Pardi, Assistant Clerk Magistrate M. Stern, ADA P. Davenport, ATTY FTR: 12:00pm		
08/22/2022	Defendant comes into court live. Lobby Conference not held. Case continued by agreement to 9-26-22 at 9am in courtroom 704 for a Lobby Conference. (Live, Non-Custody, Live Spanish Interpreter Requested via MassCourts and Email) Event Result:: Lobby Conference scheduled on: 08/22/2022 09:00 AM Has been: Not Held For the following reason: Joint request of parties Hon. Robert L Ullmann, Presiding Staff: Tiffany Castillo, Assistant Clerk Magistrate James Pardi, Assistant Clerk Magistrate K. Short for M. Stern, ADA P. Davenport, Atty FTR: 9:19am		
09/26/2022	Defendant comes into court live, non-custody. Lobby Conference held. Spanish Interpreter is present on this day. Case continued by agreement to the following dates: 1-4-23 - Final Pre-Trial Conference at 2pm in courtroom 817. 1-9-23 - Jury Trial at 9am in courtroom 817. Event Result:: Lobby Conference scheduled on: 09/26/2022 09:00 AM Has been: Held as Scheduled Hon. Michael Doolin, Presiding Staff: Tiffany Castillo, Assistant Clerk Magistrate James Pardi, Assistant Clerk Magistrate M. Stern, ADA P. Davenport, Atty FTR: 10:13am		
09/26/2022	Scheduled: Event: Jury Trial Date: 01/09/2023 Time: 09:00 AM Result: Canceled		
09/27/2022	Posted bail returned RAB form	45	
12/22/2022	Event Result:: Final Pre-Trial Conference scheduled on: 12/22/2022 03:00 PM Has been: Not Held For the following reason: Not reached by Court Comments: Courtroom 817, as well as Judge Lang, unavailable to hear this case. Hon. James F Lang, Presiding Staff:		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	James Oliver, Sessions Clerk David Sheehan, Assistant Clerk Magistrate		
12/22/2022	Commonwealth 's witness list filed	46	
12/22/2022	Commonwealth 's Motion in limine to elicit in-court identifications of defendant filed	47	
12/22/2022	Commonwealth 's Motion in limine to qualify drug expert and elicit testimony of forensic science filed	48	
12/22/2022	Commonwealth 's Motion in limine to qualify expert and elicit testimony related to narcotics distribution filed	49	
12/27/2022	Event Result:: Jury Trial scheduled on: 01/09/2023 09:00 AM Has been: Canceled For the following reason: By Court prior to date Comments: Per Judge Lang, court has permission to administratively cancel this trial date and schedule a short trial assignment conference. Courtroom 817 will be on trial on another case on this date. Hon. James F Lang, Presiding Staff: James Oliver, Sessions Clerk		
01/24/2023	Scheduled: Event: Jury Trial Date: 09/11/2023 Time: 09:00 AM Result: Rescheduled		
01/24/2023	Attorney appearance On this date Madeline A Stern, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Suffolk County District Attorney		
01/24/2023	Attorney appearance On this date John C Mooney, Esq. added as Attorney for the Commonwealth for Prosecutor Suffolk County District Attorney		
01/24/2023	Defendant comes into court, non-custody. Spanish Interpreter Karla Crispin present and sworn. Trial Assignment Conference held as scheduled. Case continued by agreement to 8/23/2023 RE: Final Pre-Trial Conference at 2 PM in Courtroom 817 Case continued by agreement to 9/11/2023 RE: Jury Trial at 9 AM in Courtroom 817 Lang, J. J. Oliver, Deputy ACM J. Mooney, ADA (Live) P. Davenport, Atty (Live) 2:10 PM FTR		
08/23/2023	Event Result:: Final Pre-Trial Conference scheduled on: 08/23/2023 02:00 PM Has been: Rescheduled For the following reason: Request of Commonwealth Comments: Commonwealth on trial in Courtroom 815 and requesting to move FPTC date to next week. Matter brought to the attention of Doolin, J. off the record. Doolin, J. allows case to be moved administratively. Case continued by agreement to 8/30/2023 at 2 PM in Courtroom 817 for a FPTC. Hon. Michael Doolin, Presiding Staff: James Oliver, Sessions Clerk		
08/30/2023	Defendant comes into court, non-custody. Spanish interpreter Karla Crispin present and previously sworn. Final Pre-Trial Conference held as scheduled. Case held for trial on 9/11/2023 at 9 AM in Courtroom 817 (Live Non-custody) (Spanish interpreter requested through Masscourts and Email) Doolin, J. J. Oliver, Deputy Assistant Clerk J. Mooney, ADA (Live) P. Davenport, Atty (Live) FTR - 2:01 PM, 2:03 PM		
09/07/2023	Scheduled: Judge: Doolin, Hon. Michael Event: Jury Trial		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Date: 09/12/2023 Time: 10:30 AM Result: Held as Scheduled		
09/07/2023	Event Result:: Jury Trial scheduled on: 09/11/2023 09:00 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Michael Doolin, Presiding Staff: James Oliver, Sessions Clerk		
09/12/2023	Scheduled: Judge: Doolin, Hon. Michael Event: Jury Trial Date: 09/13/2023 Time: 09:00 AM Result: Held as Scheduled		
09/12/2023	Defendant comes into court, non-custody. Spanish interpreter Karla Crispin present and sworn in. Jury trial held as scheduled. Case formally called. Commonwealth moves for trial. Defendant answers ready for trial. Defendant set at the bar. Prospective jurors sworn in. Court orders both parties get 4 peremptory challenges. 8 unsworn jurors excused for the day at 12:56 PM and instructed to return to court tomorrow, 9/13/2023 at 9 AM for continuation of jury trial. Cautions given. Jury empanelment concludes for the day at 3 PM with 14 unsworn jurors seated. 6 additional unsworn jurors seated and excused for the day at 3:04 PM. Jurors instructed to return to court tomorrow, 9/13/2023 at 9 AM for continuation of jury trial. Cautions given. Motions in limine hearing held. After hearing, motions in limine endorsed as stated on the record and in Masscourts. Defendant's oral motion in limine to sequester witnesses made and ALLOWED (Doolin, J.). Case continued yo 9/13/2023 RE: Jury Trial at 9 AM in Courtroom 817 (Live non-custody) Doolin, J. J. Oliver, Deputy Assistant Clerk T. Castillo, ACM K. Crispin, Spanish Interpreter (Live) J. Mooney, ADA (Live) P. Davenport, Atty (Live) FTR - 11:02 AM, 2:15 PM		
09/13/2023	Defendant comes into court, non-custody. Spanish interpreter Karla Crispin present and sworn in. Jury trial held as scheduled. Fourteen (14) jurors present and sworn. Formal reading of the indictment completed. Commonwealth and Defendant give opening statements. Evidence begins. Commonwealth rests and, after hearing, Motion for Required Finding of Not Guilty at Close of Commonwealth's Case denied. Defense rests and, after hearing, Motion for Required Finding of Not Guilty at Close of All the Evidence denied. Defendant and Commonwealth give closing arguments and jury charged. Jurors #107 in seat 3 and #132 in seat 8 are selected as alternates. Juror #137 in seat 11 is designated the foreperson. Commonwealth and Defendant state they are content with the exhibits and verdict slip.		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Deliberations begin at 3:35PM. Twelve (12) deliberating Jurors and two (2) alternate Jurors released at 4:25PM and ordered to return to continue jury deliberations on 09/14/23 at 9:00AM in Courtroom 817. M. Doolin, J. - T. Castillo, ACM - J. Mooney, ADA - P. Davenport, Atty - K. Crispin, Spanish Interpreter - FTR 9:00AM, 2:10PM		
09/13/2023	Defendant 's Motion for Required Finding of Not Guilty at Close of Commonwealth's Case, filed and denied. "Denied, after hearing." M. Doolin, J., 9/13/23.	50	 Image
09/13/2023	Defendant 's Motion for Required Finding of Not Guilty at Close of Commonwealth's Case, filed and denied. "Denied." M. Doolin, J., 9/13/23.	51	 Image
09/13/2023	Scheduled: Judge: Doolin, Hon. Michael Event: Jury Trial Date: 09/14/2023 Time: 09:00 AM Result: Held as Scheduled		
09/14/2023	Defendant comes into court, non-custody. Spanish interpreter Karla Crispin present and sworn in. Jury trial held as scheduled. Deliberations continue at 9:15AM. Twelve (12) deliberating Jurors and two (2) alternate Jurors released at 4:00PM and ordered to return to continue jury deliberations on 09/15/23 at 9:00AM in Courtroom 817. M. Doolin, J. - T. Castillo, ACM - J. Mooney, ADA - P. Davenport, Atty - K. Crispin, Spanish Interpreter - FTR 9:13AM		
09/14/2023	Scheduled: Judge: Doolin, Hon. Michael Event: Jury Trial Date: 09/15/2023 Time: 09:00 AM Result: Held as Scheduled		
09/15/2023	Defendant comes into court, non-custody. Spanish interpreter Maria Fernanda Escudero present and sworn in. Jury trial held as scheduled. Deliberations continue at 9:10AM. Twelve (12) deliberating Jurors state they are deadlocked (Exhibit H for Identification). Mistrial declared at 12:38PM. Court allows Attorney P. Davenport to withdraw due to client-attorney breakdown. Court gives Defendant his Pena warnings. Defendant states he will retain his own attorney. Case continued, by agreement, to 9/20/23 at 2PM for an Appearance of Counsel in Courtroom 817. M. Doolin, J. - T. Castillo, ACM - J. Mooney, ADA - P. Davenport, Atty - M.F. Escudero, Spanish Interpreter - R. Strauss, Spanish Interpreter - FTR 9:13AM		
09/15/2023	List of exhibits List of Exhibits and List of Items Marked for Identification	52	 Image
09/15/2023	Witness list Applies To: Suffolk County District Attorney (Prosecutor)	53	
09/15/2023	Attorney appearance On this date Paul J Davenport, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Jose Arias		
09/20/2023	Defendant comes into court, non-custody. Spanish interpreter Richard Strauss present and sworn in. Hearing on appointment of counsel held as scheduled. After hearing, defendant indicates that he intends to hire Attorney Anthony Ellison. Case continued by agreement to 10/4/2023 for Status Conference RE: Counsel at 2 PM in Courtroom 817		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	(Live non-custody) (Spanish interpreter requested through Masscourts and email). Doolin, J. J. Oliver, Deputy Assistant Clerk R. Strauss, Spanish Interpreter F. Leone for J. Mooney, ADA (Live) FTR - 2:00 PM, 2:03 PM		
10/04/2023	Defendant not present in Court. Non-Custody. Conference to Review Status not held as scheduled. Defendant failed to appear and no attorney has filed a notice of appearance. Commonwealth seeks warrants. Warrant issues. Hon. Anthony M. Campo, Presiding - T. Castillo, ACM - M. Murphy for J. Mooney, ADA - FTR 3:00PM		
10/04/2023	Issued: Default Warrant issued on 10/04/2023 for Arias, Jose Judge: Campo, Hon. Anthony M.	54	
10/12/2023	Defendant comes into court live. Spanish interpreter present K. Crispin Commonwealth does not request additional bail. Defendant released on previously posted \$15,000 bail. Bail Warning read. Case is continued to 11/06/2023 for Status conference and setting the track in courtroom 705 at 9:00AM (non-custody, live). Event Result:: Hearing for Warrant Removal scheduled on: 10/12/2023 09:00 AM Has been: Held as Scheduled Abigail Bryan, Presiding Staff: Courtney Doherty, Assistant Clerk Magistrate ADA J. Mooney, Live ATTY A. Ellison, Live FTR 10:59AM, 12:06PM, 12:35PM		
10/12/2023	Findings and Order of Statutory Fees \$50 Warrant recall fee is waived Judge: Bryan, Abigail	55	 Image
10/12/2023	Attorney appearance On this date Anthony Robert Ellison, Esq. added as Appointed - Indigent Defendant for Defendant Jose Arias Appointment made for the purpose of Bail Only by Judge Abigail Bryan.		
10/12/2023	Legal Counsel Fee Waived. Judge: Bryan, Abigail		
10/12/2023	Defendant Anthony Robert Ellison, Esq.'s Notice of appearance, filed	56	 Image
10/12/2023	warrant cancellation		 Image
11/06/2023	Defendant comes into court live. Spanish interpreter present and sworn in. Case is continued to 12/20/2023 for Status conference re:discovery and setting the track in courtroom 817 at 2PM (non-custody, live). Event Result:: Conference to Review Status scheduled on: 11/06/2023 09:00 AM Has been: Held as Scheduled Edward J Curley, Presiding Staff: Michelle Pierce, Assistant Clerk Magistrate ADA J. Mooney, Live ATTY P. Simmons FTR 10:42AM		Image
11/06/2023	Attorney appearance On this date Anthony Robert Ellison, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Defendant Jose Arias		
11/06/2023	Attorney appearance On this date Patrick H Simmons, Esq. added as Appointed - Indigent Defendant for Defendant Jose Arias Appointment made for the purpose of Case in Chief by Judge Edward J Curley.		
11/06/2023	Findings and Order of Statutory Fees \$150 Legal counsel fee is imposed Judge: Curley, Edward J	57	 Image
11/16/2023	Defendant Patrick H Simmons, Esq.'s notice of appearance, filed	58	
12/20/2023	Defendant present in Court. Non-Custody. Conference to Review Status re: Discovery held as scheduled. Defendant awaiting audio and transcript of prior trial. Case continued, by agreement, to the following dates in Courtroom 817: 01/31/24 at 2:00PM - Status Conference 03/05/24 at 2:00PM - Final Pretrial Conference 03/11/24 at 9:00AM - Jury Trial Hon. Anthony M. Campo, Presiding - T. Castillo, ACM - J. Mooney, ADA - P. Simmons, Atty. - FTR 2:08PM		
12/20/2023	Scheduled: Judge: Campo, Hon. Anthony M. Event: Jury Trial Date: 03/11/2024 Time: 09:00 AM Result: Rescheduled		
12/20/2023	Defendant 's Motion for Funds for Transcription, filed and allowed. "Allowed." A. Campo, J., 12/20/23.	59	 Image
01/26/2024	Event Result:: Conference to Review Status scheduled on: 01/31/2024 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Comments: Due to being on trial, case continued administratively with counsel. Hon. Anthony M. Campo, Presiding Staff: Danielle Bisson, Assistant Clerk Magistrate		
02/12/2024	Event Result:: Conference to Review Status scheduled on: 02/13/2024 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Comments: Due to expected winter storm on hearing date. Hon. Anthony M. Campo, Presiding Staff: Danielle Bisson, Assistant Clerk Magistrate		
02/15/2024	Defendant 's Motion to photocopy passport; affidavit in support	60	 Image
02/15/2024	Event Result:: Conference to Review Status scheduled on: 02/15/2024 10:00 AM Has been: Not Held For the following reason: Joint request of parties Comments: Case has next dates, status conference unnecessary on this date. Hon. Anthony M. Campo, Presiding Staff: Danielle Bisson, Assistant Clerk Magistrate		
02/15/2024	Attorney appearance On this date John C Mooney, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Suffolk County District Attorney		
02/15/2024	Attorney appearance On this date Thomas J Lavery, Esq. added as Attorney for the Commonwealth for Prosecutor Suffolk County District Attorney		
02/27/2024	Event Result:: Motion Hearing scheduled on: 02/28/2024 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Anthony M. Campo, Presiding Staff: Danielle Bisson, Assistant Clerk Magistrate		
03/05/2024	Defendant comes into court. Spanish Interpreter Karla Crispin, present and sworn.		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	After hearing on defendant's motion to photocopy passport P#60; ALLOWED after hearing and without objection. The defendant may have a photocopy of his passport that is being held in the Criminal Clerk's Office. The Criminal Clerk's Office shall retain custody of the defendant's passport, until further order of the Court. Parties report ready for trial. FPTC not held as case will not be reached in this session for trial on 3/11/24 as scheduled. Case to be transferred to another session for trial depending on session availability. Case held for trial until further notice. Hon. Anthony M. Campo, Presiding Danielle Bisson, Assistant Clerk Magistrate T. Lavery, ADA P. Simmons, Atty FTR - 2:28 PM		
03/05/2024	Endorsement on Motion to photocopy passport, (#60.0): ALLOWED		
03/05/2024	Defendant 's Motion for attorney conducted voir dire or in the alternative proposed questions for the venire	61	
03/05/2024	Commonwealth, Defendant 's Final Pretrial Memorandum	62	
03/05/2024	Commonwealth 's witness list	63	
03/05/2024	Commonwealth 's Motion in limine to elicit in-court identifications of the defendant Judge: Campo, Hon. Anthony M.	64	
03/05/2024	Commonwealth 's Motion in limine to qualify drug expert and elicit testimony of forensic scientist	65	
03/05/2024	Commonwealth 's Motion in limine to qualify and elicit testimony related to narcotics distribution Judge: Campo, Hon. Anthony M.	66	
03/06/2024	Event Result:: Jury Trial scheduled on: 03/11/2024 09:00 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. Anthony M. Campo, Presiding Staff: Danielle Bisson, Assistant Clerk Magistrate		
03/06/2024	Scheduled: Judge: Budreau, Hon. James Event: Jury Trial Date: 03/11/2024 Time: 09:00 AM Result: Held as Scheduled		
03/07/2024	Docket Note: By agreement of ADA T.Lavery and Atty T.Simmons, Case scheduled for 3/7/24 at 2PM for status Conference re: Outstanding Trial Issues (ctrm 815, Non-Custody) Deft excused Budreau J. T.Lavery, ADA P.Simmons, Atty No FTR D.Sheehan, ACM		
03/08/2024	Defendant 's Motion for Attorney Conducted Voir Dire or In the Alternative Proposed Questions for the Venire	67	
03/08/2024	Commonwealth 's Motion for Judicial Inquiry into Criminal History Records of Potential Trial Jurors or, In the Alternative, Notice of Intent to Independently Seek Such Information For Limited Purposes of Jury Empanelment	68	
03/08/2024	Commonwealth 's Motion to Allow Evidence of Defendant's Flight as Evidence of Consciousness of Guilt and to Argue Flight as Consciousness of Guilt to the Jury	69	
03/08/2024	Event Result:: Conference to Review Status scheduled on: 03/08/2024 02:00 PM Has been: Held as Scheduled Non-Custody Defendant's presence is waived for today's purposes. Conference to Review Status re Trial scheduling and Motions in Limine is held before Budreau, J. The matter remains scheduled for Trial on 3/11/24 9am in CTRM 815. Hon. James Budreau, Presiding - T. Lavery, ADA - P. Simmons, Attorney Staff:		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Moira Daly, Assistant Clerk Magistrate FTR: 2:03pm		
03/08/2024	Scheduled: Judge: Budreau, Hon. James Event: Jury Trial Date: 03/12/2024 Time: 09:00 AM Result: Held as Scheduled		
03/08/2024	Endorsement on Commonwealth 's Motion in limine to qualify and elicit testimony related to narcotics distribution, (#66.0): ALLOWED Allowed but Court will conduct voir dire as to limits of testimony. 3/8/24 Budreau, J.		 Image
03/08/2024	Endorsement on Commonwealth 's Motion in limine to elicit in-court identifications of the defendant, (#64.0): ALLOWED Allowed without opposition. 3/8/24 Budreau, J.		 Image
03/08/2024	Endorsement on Commonwealth 's Motion for Judicial Inquiry into Criminal History Records of Potential Trial Jurors or, In the Alternative, Notice of Intent to Independently Seek Such Information For Limited Purposes of Jury Empanelment, (#68.0): ALLOWED		 Image
03/08/2024	Endorsement on Defendant 's Motion for Attorney Conducted Voir Dire or In the Alternative Proposed Questions for the Venire, (#67.0): ALLOWED		 Image
03/08/2024	Endorsement on Commonwealth 's Motion to Allow Evidence of Defendant's Flight as Evidence of Consciousness of Guilt and to Argue Flight as Consciousness of Guilt to the Jury, (#69.0): DENIED Denied without Prejudice. 3/8/24 Budreau, J.		 Image
03/11/2024	Commonwealth 's Motion to Reduce Count One of the Indictment	70	
03/11/2024	Event Result:: Jury Trial scheduled on: 03/11/2024 09:00 AM Has been: Held as Scheduled Non-Custody Defendant comes into Court for Trial Event before Budreau, J. Spanish Interpreter, Karla Crispin, is present and sworn. Hon. James Budreau, Presiding - T. Lavery, ADA - P. Simmons, Attorney Staff: Moira Daly, Assistant Clerk Magistrate David Sheehan, Assistant Clerk Magistrate FTR: 9:29am		
03/11/2024	TRIAL ACTIVITY: Prior to Trial, voir dire of Commonwealth witness Sgt. Detective Paul Quinn is conducted re scope of trial testimony. The Commonwealth formally moves for Trial re: Offense # 001 as amended by agreement to read Trafficking in Cocaine 100-200 grams pursuant to MGL Ch94C s 32E(b). The Defense answers ready for Trial and the Defendant is set formally at the bar. Jury Venire is sworn. The Court Orders a panel of Fourteen (14) Jurors be empaneled. Empanelment suspends for the day at 3:05pm. The Court Orders the Fourteen (11) selected, Unsworn Jurors to Depart with the Court's Instructions and Order them all to return on 3/12/24 at 10am to resume with Trial. Empanelment to resume at 9am.		
03/11/2024	Endorsement on Commonwealth's Motion to Reduce Count One of the Indictment, (#70.0): ALLOWED 3/11/24 Budreau, J.		 Image
03/12/2024	Event Result:: Jury Trial scheduled on: 03/12/2024 09:00 AM Has been: Held as Scheduled Non-Custody Defendant comes into Court for Trial Event before Budreau, J. Spanish Interpreter, Karla Crispin, is present and sworn. Hon. James Budreau, Presiding - T. Lavery, ADA - P. Simmons, Attorney Staff: Moira Daly, Assistant Clerk Magistrate David Sheehan, Assistant Clerk Magistrate FTR: 9:45am		
03/12/2024	TRIAL ACTIVITY: Empanelment resumes this day at 9:45am. Fourteen (14) Jurors sworn. Indictments formally read to the Jury, Pre-Charge given. Opening Statements made by the Commonwealth and the Defense. Evidence begins at 11:35am. Commonwealth rests its Case in Chief at 2:56pm. The Defendant's Motion for a required Finding of Not Guilty at the close of the Commonwealth's case filed and DENIED after hearing at sidebar - Budreau, J. Colloquy conducted with the Defendant at sidebar regarding Right to Testify at 2:58pm. Defense rests its		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	case at 2:59pm. Trial suspends for the Day at 3:02pm. The Court allows the Fourteen (14) selected, Sworn Jurors to Depart with the Court instructions and Orders them to return on 3/13/24 at 9AM to resume with the Trial (ctrm 815). Charge conference held at 3:38pm. The matter is continued to tomorrow 3/13/24 for the continuation of Trial at 9am.		
03/12/2024	Defendant 's Motion for Required Finding of Not Guilty, Filed	71	
03/12/2024	Scheduled: Judge: Budreau, Hon. James Event: Jury Trial Date: 03/13/2024 Time: 09:00 AM Result: Held as Scheduled		
03/12/2024	Endorsement on Defendant 's Motion for Required Finding of Not Guilty, (#71.0): DENIED Denied. A reasonable jury could find defendant guilty of the indictment when the evidence is viewed in the light most favorable to the prosecution. See Comm v. Latimore. 3/12/24 Budreau, J. Denied after defendant's case was closed (no witness) 3/13/24. Budreau, J.		 Image
03/13/2024	Event Result:: Jury Trial scheduled on: 03/13/2024 09:00 AM Has been: Held as Scheduled Non-Custody Defendant comes into Court for Trial Event before Budreau, J. Spanish Interpreter, Karla Crispin, is present and sworn. Hon. James Budreau, Presiding - T. Lavery, ADA - P. Simmons, Attorney Staff: Moir a Daly, Assistant Clerk Magistrate David Sheehan, Assistant Clerk Magistrate FTR: 9:10am		
03/13/2024	TRIAL ACTIVITY: Further Charge Conference held before Budreau, J. Defendant orally renews Motion for Required Finding of Not Guilty at the close of all the evidence. Defendant's motion was denied without a hearing - Budreau, J. Trial resumes before Budreau J. and a panel of fourteen (14) Juro s present. Part 1 instructions given. Closing arguments are made by the Defense and Commonwealth. Part 2 instructions are given. The time having come for the Final submission of the case to the Jury and a panel of fourteen (14) Jurors present, the Court Orders the Jury to be reduced to Twelve (12) members. The Court designates Juror #179 seat 8 as Foreperson. By random lottery process, Juror #95 in seat 12 and Juror #177 in seat 13 are each designated to be alternate Jurors. Court officers are sworn. After inspection, both the Commonwealth and the Defendant indicate they are satisfied with the state of the exhibits and Verdict slip. Jury deliberations begin. Jurors return a note at 2:47pm and Court responds (ID C). Jurors return at note at 3:30 and Court responds (ID D). Trial suspends for the Day at 4:00PM. The Court Allows the Fourteen (14) Jurors to depart with the Courts Instructions and Orders them to return on 3/14/24 at 9AM to resume with deliberations.		
03/13/2024	Scheduled: Judge: Budreau, Hon. James Event: Jury Trial Date: 03/14/2024 Time: 09:00 AM Result: Held as Scheduled		
03/14/2024	Event Result:: Jury Trial scheduled on: 03/14/2024 09:00 AM Has been: Held as Scheduled Non-Custody Defendant comes into Court for Trial Event before Budreau, J. Spanish Interpreter, Maria Fernanda Escudera, is present and sworn. Hon. James Budreau, Presiding - T. Lavery, ADA - P. Simmons, Attorney Staff: Moir a Daly, Assistant Clerk Magistrate David Sheehan, Assistant Clerk Magistrate FTR: 9:26am		
03/14/2024	TRIAL ACTIVITY: Trial Resumes before Budreau, J. and a panel of Fourteen (14) Jurors Present. The twelve (12) deliberating Jurors continue with their deliberations. 10:35am Jurors return note to Court (ID E). 10:40am Court gives instructions to deliberating Jurors to continue with their deliberations.		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Verdict returned by Jury at 3:45pm. Verdict - Guilty as to so much of offense #001 Trafficking In Cocaine, 18 grams or more, less than 36 grams. Verdict is affirmed, Verdict slip filed. Jury is Discharged. After the Jury having returned a verdict of Guilty, the Court revokes all prior orders of Bail and the Defendant is ordered held on a Mittimus Without Bail pending Sentencing on 3/25/24 at 2pm (CTRM 815). Exhibit #11 has been returned to the Commonwealth (see Evidence Receipt Form)		
03/14/2024	The defendant\petitioner is committed without bail for the following reason: Per Order of the Court.	72	
03/14/2024	Verdict affirmed, verdict slip filed	73	
03/14/2024	List of exhibits and List of Items Marked for Identification for Jury Trial	74	 
03/14/2024	Witness list Applies To: Laverty, Esq., Thomas J (Attorney) on behalf of Suffolk County District Attorney (Prosecutor)	75	
03/14/2024	Defendant 's Motion for Stay of Execution of Sentence Filed and Denied without Prejudice. 3/14/24 Budreau, J.	76	
03/14/2024	Drug Evidence Receipt Form	77	
03/14/2024	Offense Disposition:: Charge #1 COCAINE, TRAFFICKING IN 18 GRAMS OR MORE, LESS THAN 36 GRAMS c94C §32E(b) 94C/32E/A-4 On: 03/14/2024 Judge: Hon. James Budreau Guilty Verdict - Lesser Included		
03/14/2024	List of jurors filed.	80	
03/15/2024	Defendant brought into court via Zoom from Nashua Street Jail. Motion Hearing held. Defendant's Motion to Vacate Verdict and Declare Mistrial filed and, after hearing, no action is taken this day. Defendant's Oral Motion to Release is denied. Case continued to previously scheduled date of 3/25/24 at 2:00 PM for further Motion Hearing (Live Jail List). Event Result:: Motion Hearing scheduled on: 03/15/2024 10:30 AM Has been: Held as Scheduled Hon. Michael Doolin, Presiding Staff: Tiffany Castillo, Assistant Clerk Magistrate James Pardi, Assistant Clerk Magistrate ADA B. Hartley, ADA T. Laverty Atty P. Simmons FTR: 10:32 AM		
03/15/2024	Defendant 's Motion to Vacate Verdict and Declare Mistrial, with IMPOUNDED attachment, filed	78	
03/15/2024	Docket Note: Email Received from Attorney Simmons at 9:08am.	79	
03/18/2024	Docket Note: Letter Received from Juror (Ordered Impounded)	81	
03/21/2024	Commonwealth 's Response to Defendant's Motion to Vacate Verdict and Declare Mistrial	82	
03/25/2024	Commonwealth 's Memorandum regarding Sentencing filed Note: Attached BOP record in support there of filed (Impounded)	82.1	
03/25/2024	Defendant 's Memorandum of Law in support of Motion to Vacate Verdict and Declare Mistrial filed	82.2	
03/25/2024	Commonwealth 's Motion in opposition to Defendant's Renewed Motion for a Required Finding of not Guilty Filed 3/25/24 Endorsement of the Court Budreau J. " Motion is Denied"	82.3	
03/25/2024	Issued on this date: Mittimus for Sentence (All Charges) Sent On: 03/25/2024 15:37:05	83	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/25/2024	Findings and Order of Statutory Fees issued and filed \$50.00 Warrant recall fee vacated \$150.000 Legal Counsel Fee vacated \$150.00 Drug Analysis Fee waived \$90.00 Victim Witness Fee Waived \$110.00 DNA Fee waived Judge: Budreau, Hon. James	84	 Image
03/25/2024	Event Result:: Hearing for Sentence Imposition scheduled on: 03/25/2024 02:00 PM Has been: Held as Scheduled Custody Defendant brought into Court. Hearing for Sentence Imposition and Hearing on Defendant's Motion to Vacate Verdict and Declare Mistrial is held before Budreau, J. Defendant's renewed Motion for Required Finding of Not Guilty is Denied - Budreau, J. The Court takes no action on Defendant's Motion to Vacate Verdict and Declare Mistrial - the parties may have until Friday 3/29 to further brief the issue as stated on the record. Defendant's Motion to Stay Sentencing is denied. Hon. James Budreau, Presiding - T. Lavery, ADA - B. Hartley, ADA - P. Simmons, Attorney Staff: Moirá Daly, Assistant Clerk Magistrate David Sheehan, Assistant Clerk Magistrate FTR: 2:43pm		
03/25/2024	Defendant sentenced:: Sentence Date: 03/25/2024 Judge: Hon. James Budreau Charge #: 1 COCAINE, TRAFFICKING IN 18 GRAMS OR MORE, LESS THAN 36 GRAMS c94C §32E(b) State Prison Sentence Not Less Than: 2 Years, 0 Months, 0 Days Not More Than: 2 Years, 0 Months, 1 Days Committed to Souza Baranowski Correctional Center Credits 96 Days		
03/29/2024	Defendant 's Supplemental memorandum of Law in support of Motion to Vacate Verdict and declare Mistrial filed	85	 Image
03/29/2024	Commonwealth 's Supplemental Response to Defendant's Motion to Vacate Verdict and Declare Mistrial Filed	86	 Image
04/01/2024	ORDER: On Motion to Vacate and Declare a Mistrial Motion is Denied, Budreau, J 4/1/24 Parties notified via electronic mail	87	 Image
04/02/2024	Notice of appeal from sentence to Souza Baranowski Correctional Center filed by defendant	88	 Image
04/02/2024	Notification to the Appellate Division sent.		
04/03/2024	Document: Letter to the Appellate Division Sent On: 04/03/2024 10:30:02		
04/03/2024	Appeal for review of sentence entered at the Appellate Division: Originating Court: Suffolk County Criminal Receiving Court: Suffolk County Criminal Case Number: 2484AD093-SU ;		
04/09/2024	Notice to surety M. Sanches and S. Tejeda bail available for return.		
04/10/2024	Posted bail returned RAB Scanned for Santa Tejeda	89	
04/10/2024	Posted bail returned RAB Scanned for Maria Sanchez	90	
04/12/2024	Notice of appeal filed by defendant regarding certain opinions, rulings, directions and judgements of the Court.	91	 Image
04/12/2024	Notice regarding notice of appeal filed and email regarding transcripts.		 Image
07/08/2024	General correspondence regarding Letter Received from CPCS Re: Assignment of Counsel	92	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/18/2024	CD of Transcript of 04/27/2021 10:00 AM Evidentiary Hearing on Suppression, 03/11/2024 09:00 AM Jury Trial, 03/12/2024 09:00 AM Jury Trial, 03/13/2024 09:00 AM Jury Trial, 03/25/2024 02:00 PM Hearing for Sentence Imposition received from Jolanta Ewing.		
07/24/2024	CD of Transcript of 09/12/2023 10:30 AM Jury Trial, 09/13/2023 09:00 AM Jury Trial, 09/14/2023 09:00 AM Jury Trial, 09/15/2023 09:00 AM Jury Trial received from Jolanta Ewing.		
09/25/2024	CD of Transcript of 12/10/2019 09:30 AM Motion Hearing, 01/27/2020 02:00 PM Motion Hearing, 01/13/2021 09:30 AM Conference to Review Status, 03/08/2024 02:00 PM Conference to Review Status, 03/15/2024 10:30 AM Motion Hearing received from Jolanta Ewing.		
09/26/2024	Attorney appearance On this date John Warren, Esq. added for Defendant Jose Arias		
09/26/2024	Appeal: Statement of the Case on Appeal (Cover Sheet).	93	 Image
09/26/2024	Attorney appearance On this date David D McGowan, Esq. added for Prosecutor Suffolk County District Attorney		
09/26/2024	Notice of assembly of record sent to Counsel Applies To: McGowan, Esq., David D (Attorney) on behalf of Suffolk County District Attorney (Prosecutor); Warren, Esq., John (Attorney) on behalf of Arias, Jose (Defendant)		
09/26/2024	Notice to Clerk of the Appeals Court of Assembly of Record		
09/27/2024	Appeal entered in Appeals Court on 09/26/2024 docket number 2024-P-1111	94	 Image
11/19/2024	Sentence Appeal Appeal Withdrawn Applies To: Arias, Jose (Defendant)		
02/19/2025	Commonwealth, Defendant 's Joint Motion for Parties to View and Copy Impounded Materials filed (Copy, Notice and Docket sent by mail to Budreau, J.)	95	
02/21/2025	Endorsement on The commonwealth and defendant's joint motion to view and copy impounded materials, filed, (#95.0): ALLOWED Copy of endorsement and notice sent to ADA Hartley and ATTY Warren		 Image
02/28/2025	Attorney appearance On this date Brooke Hartley, Esq. added as Attorney for the Commonwealth for Prosecutor Suffolk County District Attorney		
Case Disposition			
<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>	
Disposed by Jury Verdict	03/14/2024	Budreau, Hon. James	

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
Criminal No. 19-479

COMMONWEALTH

vs.

JOSE LUIS ARIAS

MEMORANDUM AND ORDER
ON DEFENDANT'S MOTION TO SUPPRESS
PHYSICAL EVIDENCE AND STATEMENTS

Defendant Jose Luis Arias is charged with trafficking more than 200 grams of cocaine. The charge followed a stop of defendant's motor vehicle on March 28, 2019 and a search of his person and vehicle, which yielded the cocaine. Defendant now moves to suppress the fruits of the stop. At the evidentiary hearing, the Commonwealth called three witnesses.¹ For the following reasons, the motion is allowed as to defendant's statements, but is otherwise denied.

FINDINGS OF FACT

Based on the preponderance of the credible evidence, I find the following facts:

On March 27, 2019, Boston police officers assigned to the drug control unit at Area D-14 in Brighton ("DCU") were on patrol in plain clothes and in unmarked vehicles in Brighton. They were in communication over a dedicated police radio channel. At about 3:10 p.m., Sgt. Det. William J. Feeney observed a grey Chevrolet Equinox SUV, Mass. Reg. 886VA2 ("the SUV") parked on Foster Street in Brighton near the Rogers Playground.² The vehicle was registered to

¹ Sgt. Det. William J. Feeney, Off. Mathew Pieroway, and Det. Andrew Miskell.

² The police apparently had information about the SUV and/or defendant before Sgt. Det. Feeney's observations of the SUV on March 27, 2019, but the Commonwealth does not rely on any such information. I do not know what information the police had. Consistent with the

Ciade E. Carvajal, a 61-year old black man. Sgt. Det. Feeney observed a light-skinned Hispanic male, later identified as defendant, get into the SUV and drive away. Although Sgt. Det. Feeney saw the SUV take a left on Washington Street, he got snarled in traffic and was unable to follow the SUV much farther.

DCU Officer Mathew Pieroway was in communication with Sgt. Det. Feeney. Off. Pieroway was in plain clothes and was driving an unmarked vehicle, which coincidentally also happened to be a Chevrolet Equinox. Hearing communications from Sgt. Det. Feeney about the SUV, Off. Pieroway began surveillance of the SUV, locating it in the Oak Square area. Off. Pieroway then followed the SUV on Washington Street toward Chestnut Hill Avenue, and ultimately to the area of Center and South Streets in Jamaica Plain.

In the vicinity of Holbrook Street in Jamaica Plain, although Center Street, as it approaches South Street, allows a single lane of traffic, it has enough room to the right for a car to drive on a bike lane next to the lane of traffic. As Off. Pieroway was following the SUV on Center Street around Holbrook Street, traffic was heavy. A line of traffic was stopped at the stop sign at South Street. Off. Pieroway observed defendant pull the SUV quickly around the right side of the line of traffic, which was stopped at the South Street stop sign, pass approximately seven vehicles stopped at the intersection, fail to stop at the stop sign, and take an immediate left in front of the line of traffic.³ Because he was in an unmarked vehicle without immediate back-up, and because of his safety concerns, Off. Pieroway terminated his surveillance of the SUV.

parties' stipulation, I do not rely on the fact that the police had any information prior to Sgt. Det. Feeney's observations.

³ On March 27, 2019, the police followed the SUV for approximately six miles. Despite this lengthy surveillance, other than this traffic violation, the police did not observe any other traffic offense, evasive driving, or indication that defendant was aware he was being followed.

The next day, March 28, 2019, at about 3:15 p.m., Sgt. Det. Feeney saw defendant exit a residence on Foster Street in Brighton and enter the SUV, which was parked on Foster Street, across the street from where it had been parked the day before. Sgt. Det. Feeney began to follow the SUV, which drove on Foster Street and turned onto Washington Street. Again, Sgt. Det. Feeney got tied up in traffic, but other DCU officers continued the surveillance.

Off. Pieroway heard Sgt. Det. Feeney's radio calls. When he was in the vicinity of Chestnut Hill Avenue and Washington Street, Off. Pieroway spotted the SUV. Off. Pieroway began to follow the SUV and requested a marked police vehicle to stop the SUV. In making the request, Off. Pieroway stated on the police radio: "we're looking to stop a vehicle for drug investigation. It will be a silver Chevy Equinox, 8-8-6-Victor-Echo-2. We're at the red light here in front of the Bank of America at Market and Wash." (Emphasis added).

Off. Pieroway observed a marked unit arrive. As the SUV was traveling up Market Street, the marked vehicle was behind the SUV and Off. Pieroway was somewhat behind it in his unmarked vehicle. Off. Pieroway saw the marked unit activate its lights and sirens shortly after turning onto Market Street, just before Henshaw Street. Rather than pull over immediately on Market Street, the SUV proceeded slowly about a block, past a few businesses, to the next street on the left (Bennett Street) and attempted to take a left onto Bennett Street.

DCU Det. Andrew Miskell was also following the marked unit. After seeing the SUV fail to stop, continue to drive forward slowly, and attempt to take a left on Bennett Street, Det. Miskell pulled his vehicle slightly to the left into oncoming traffic, stopping the heavy traffic in the opposite direction. Det. Miskell's driving maneuver effectively cut off the SUV's ability to take a left onto Bennett Street because the SUV was blocked by the stopped line of traffic heading in the opposite direction.

The driver of the marked unit and a Boston police detective approached the driver of the SUV (defendant) and asked him to exit the SUV.⁴ As Det. Miskell stated, “he [defendant] was exited from the vehicle” within seconds. There was no request for defendant’s license or registration. The officers moved defendant from the middle of Market Street to the sidewalk on the Bennett Street side of Market Street.

Meanwhile, Det. Miskell pulled his vehicle onto Bennett Street and parked. He walked back to where defendant was being held and identified himself as a DCU detective. Det. Miskell did not tell defendant that he was under arrest. Det. Miskell then pat frisked defendant, locating a hard object in defendant’s pocket. When asked, defendant said that the object was cocaine. Det. Miskell then put defendant in handcuffs and read certain warnings prescribed by Miranda v. Arizona, 384 U.S. 436 (1966), from a preprinted card. I do not know what was on the card or what Det. Miskell read. Defendant was not asked to sign a form stating that he understood the Miranda warnings. Rather, defendant verbally acknowledged he understood the warnings that were read. After giving defendant these warnings, Det. Miskell posed some questions to defendant, who answered them and directed the police to additional drugs in the SUV.

The traffic infraction on March 27, 2019 was a pretext for the motor vehicle stop on March 28, 2019. As is evident from the transcript of Off. Pieroway’s radio call for a marked unit to stop the SUV, the real reason for the stop on March 28 was to allow the DCU officers to pursue a drug investigation related to defendant and/or the SUV.⁵

⁴ Neither the driver of the marked unit nor the detective testified at the hearing.

⁵ According to the transcript of the relevant turret tape recordings, Off. Pieroway called for the marked unit to stop the SUV at 3:27 p.m. The marked unit stopped the SUV within three minutes and Off. Pieroway immediately requested that a drug-sniffing dog be sent to the location of the stop in the vicinity of 354 Market Street. The dispatcher called for the drug dog just before 3:31 p.m. At approximately 3:33 p.m., after pat frisking defendant, Off. Pieroway told

Defendant now challenges the fruits of the stop, including any statements he made.

DISCUSSION

I. The Stop and Search

A police officer may stop a motor vehicle if the officer observes the vehicle violate a traffic law. Commonwealth v. Santana, 420 Mass. 205, 207 (1995) (police authorized to stop vehicle for broken taillight); Commonwealth v. Bacon, 381 Mass. 642, 644 (1980). Regardless of the police officer's motive for the stop,⁶ the stop is lawful if the officer has reasonable suspicion that the driver committed a traffic violation. Commonwealth v. Avellar, 70 Mass. App. Ct. 608, 613 (2007).

The police had a lawful basis to stop defendant on March 28, 2019 for the traffic violation that Off. Pieroway observed the previous day. By the time of the stop, Off. Pieroway had seen defendant travel in an unauthorized lane on Center Street, fail to stop for a stop sign, and cut off a line of stopped traffic as he took a left turn from a right lane. In addition, the police had observed that the driver of the SUV on March 28, 2019 was the same person who committed the traffic violation on March 27, 2019. The information about the observed traffic violation from the previous day was not so stale that the police could not act on it.

Defendant cites no authority for his argument that a motor vehicle stop may not be based on a traffic violation witnessed the previous day. I have been unable to locate any reported cases in Massachusetts on the issue one way or the other. It bears noting, however, that the Supreme

the police dispatcher to cancel the drug dog and that they would need a tow truck (for the SUV) at their location.

⁶ See Commonwealth v. Buckley, 478 Mass. 861, 873 (2018) (“Outside of the racial profiling context – as this case is – the reasonableness of a traffic stop does not depend upon the particular motivations underlying the stop. . . . [L]egal justification alone, such as an observed traffic violation, is sufficient.”). Compare also Commonwealth v. Long, 485 Mass. 711, 727 (2020) (same), with Long, 485 Mass. at 737-748 (Budd, J., concurring).

Judicial Court has recognized the “governmental interest” in enforcement of the Commonwealth’s traffic laws to be “significant” and “clear and compelling.” Commonwealth v. Rodriguez, 472 Mass. 767, 776-777 (2015).

In the circumstances of this case, the decision not to call for back-up and try to stop the SUV for the traffic violation on March 27, 2019, was reasonable. The police also acted reasonably thereafter, undertaking to stop the SUV’s operator at their next available opportunity, which was the next day when the same operator was seen to be driving the SUV. Such delay was reasonable. See also, e.g., United States v. Zuniga, 860 F.3d 276, 282-283 (5th Cir. 2017) (“We make no attempt to articulate a *specific* time limitation to which officers must adhere in effecting a stop following a traffic violation. . . . [W]e hold only that the elapsed time between an observed violation and any subsequent stop must be reasonable upon consideration of the totality of the circumstances.”) (emphasis in original); Hairston v. Commonwealth, 67 Va. App. 552, 564-566, 797 S.E.2d 794, 800-801 (Va. Ct. App. 2017) (“the fact that a period of time passed after [the] Detective [] saw the appellant commit the reckless driving offense and before she seized him for further investigation or arrest does not defeat the existence of probable cause”) (and cases cited).

While the police had a lawful basis to stop the SUV on March 28, 2019, based on the traffic violation observed the day before, these observations were only sufficient to justify the stop of the SUV. Without more, the police only had enough information to stop the SUV and give the driver a citation for the traffic violation. The police did not have sufficient information from their observations on March 27 and March 28 either to justify an exit order based on a reasonable belief that officer safety, or the safety of others, was in danger, Commonwealth v. Gonsalves, 429 Mass. 658, 661, 663-664 (1999), or to justify a pat frisk based on a reasonable

belief that defendant was armed and dangerous. Commonwealth v. Torres-Pagan, 484 Mass. 34, 36 (2020), citing Arizona v. Johnson, 555 U.S. 323, 326–27 (2009).

But here there was more. A person operating a motor vehicle must stop and provide identification when signaled by a police officer who exercises rightful authority. See G.L. c. 90, § 25 (“Any person who, while operating or in charge of a motor vehicle, . . . shall refuse or neglect to stop when signaled to stop by any police officer who is in uniform or who displays his badge conspicuously on the outside of his outer coat or garment, . . . shall be punished”); Commonwealth v. Gray, 423 Mass. 293, 296 (1996) (driver’s failure to stop for “a person with authority” gave detective authority to arrest driver). By activating its blue lights and sirens, the marked police vehicle put the SUV’s driver on notice that he was required to stop. See Commonwealth v. Ross, 73 Mass. App. Ct. 181, 184 (2008). As every driver knows, defendant was required to stop promptly when the police acted under a show of lawful authority to pull over the SUV. G.L. c. 90, § 25. When the SUV failed to pull over, but continued to drive forward slowly, and attempted to turn onto Bennett Street, the police had probable cause to stop the SUV and arrest the driver. See G.L. c. 90, § 21 (“Any officer . . . may arrest without a warrant . . . any person who . . . violates” G.L. c. 90, § 25). Although the police did not cite defendant for failure to stop, defendant’s failure to stop allowed the police to stop and arrest him, and then to search him incident to arrest.⁷

⁷ Defendant cites Commonwealth v. Brantley, 90 Mass. App. Ct. 901, 902 (2016) (rescript), as supporting the notion that a driver may be arrested for failing to stop after a show of lawful authority, but attempts to distinguish the facts in Brantley from the facts in this case. Defendant’s argument is based on the incorrect assumption that Brantley sets a floor for what constitutes an arrestable offense for failure to stop. It does not. Instead, Brantley provides an example of probable cause to believe a driver has committed the offense of failing to stop. Id. at 902 (“defendant’s operation of the vehicle, backward toward the officer after being stopped, established probable cause to support arrest for” failure to stop). In contrast, in this case, after the marked police vehicle activated its lights and sirens, defendant continued to drive his SUV away

II. Defendant's Statements

The police may not question a person who is in custody unless the person knowingly and intelligently waives his Fifth Amendment rights protected through the prophylactic mechanism of Miranda warnings. To safeguard a defendant's right to remain silent, "prior to custodial interrogation, a suspect must 'be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.'" Commonwealth v. Simon, 456 Mass. 280, 286 (2010), quoting Miranda, 384 U.S. at 444; Commonwealth v. Martin, 444 Mass. 213, 218 (2005). The Commonwealth bears the burden to demonstrate that a defendant "waive[d] the privilege against self-incrimination [] willingly, knowingly, and intelligently." Simon, 456 Mass. at 287.

The first question in this context is whether defendant was in custody at the time of the statements. "Whether a person is in custody depends of four factors: '(1) the place of the interrogation; (2) whether the officers have conveyed to the person being questioned any belief or opinion that that person is a suspect; (3) the nature of the interrogation, including whether the interview was aggressive or, instead, informal and influenced in its contours by the person being interviewed; and (4) whether, at the time the incrimination statement was made, the person was free to end the interview by leaving the locus of the interrogation or by asking the interrogator to leave, as evidenced by whether the interview terminated with an arrest.'" Id., quoting Commonwealth v. Groome, 435 Mass. 201, 211-212 (2001). "The crucial question is whether, considering all the circumstances, a reasonable person in the defendant's position would have believed that he was in custody." Groome, 435 Mass. at 211.

from the police without stopping, and attempted to cross a line of oncoming traffic to turn onto a perpendicular street. Such behavior established probable cause to believe defendant was committing the offense of failing to stop.

With respect to defendant's statements, Det. Miskell first asked defendant about the object he felt during the pat frisk. The question to defendant followed a substantial show of police force, with multiple units responding, the police removing defendant from his vehicle within seconds, and a pat frisk of defendant by a DCU officer. At the time, defendant was in custody for failing to stop and, although the police did not tell defendant that he was under arrest, a reasonable person in defendant's position would have believed he was in custody. Moreover, the question posed to defendant was posed after Det. Miskell felt the hard object in defendant's pocket. Det. Miskell's question was posed prior to any Miranda warnings being given. As such, defendant's statement must be suppressed.

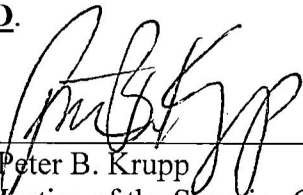
Defendant's other statements on the street were made in response to police questioning after defendant was told he was under arrest and handcuffed. Full and complete Miranda warnings were required. The Commonwealth bears the burden of demonstrating defendant's knowing and intelligent waiver of his Fifth Amendment rights. Where the Commonwealth has failed to prove in any detail what rights were read to defendant, it has failed to shoulder its burden.

Although defendant's statements must be suppressed, the additional evidence found during the search of the SUV, which was found more easily due to defendant's statements at the scene, will not be. Having arrested defendant for possession of drugs on his person, the SUV was going to be towed and would have been subject to an inventory search, at a minimum. Moreover, it was clear from Det. Miskell's questions that the police were planning to search the SUV for additional evidence of drug distribution and would have been able to secure a search warrant to do so. The contents of the SUV would inevitably have been discovered as a result. See, e.g., Commonwealth v. Ubilez, 88 Mass. App. Ct. 814, 817-820 (2016).

ORDER

Defendant's Motion to Suppress Physical Evidence and Statements (Docket #17) is **ALLOWED** only insofar as defendant's statements to Det. Miskell at the time of his stop and arrest shall be suppressed. The motion is otherwise **DENIED**.

Dated: June 17, 2021



Peter B. Krupp
Justice of the Superior Court

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**SUPERIOR COURT
CRIMINAL ACTION
NO. 1984CR00479**

COMMONWEALTH

vs.

**JOSE ARIAS
Defendant**

ORDER ON MOTION TO VACATE AND DECLARE A MISTRIAL

Defendant, Jose Arias, moves this Court to vacate his conviction and declare a mistrial after a juror sent a letter to the Court indicating that they felt pressured into changing their verdict and now regrets their decision.¹ Defendant first seeks further inquiry with the juror and then moves this Court to vacate the conviction. This Motion is DENIED for the following reasons.

DISCUSSION

This Court must adhere to the principle that “it is essential to the freedom and independence of [jury] deliberations that their discussions in the jury room should be kept secret and inviolable...” with limited exceptions. *Commonwealth v. Pytou Heang*, 458 Mass. 827, 858 (2011) quoting *Commonwealth v. Fidler*, 377 Mass. 192, 196, (1979), quoting *Woodward v. Leavitt*, 107 Mass. 453, 460 (1871). When, as in this case, the Court receives a post-verdict letter from a juror, the judge has no duty to investigate or to conduct an evidentiary hearing “unless the court finds some suggestion or showing that extraneous matters were brought

¹ This Court uses the pronouns they and their for this juror.

into the jury's deliberations,” *Id* quoting *Commonwealth v. Dixon*, 395 Mass. 149, 151 (1985), “or that a juror made a statement to another juror that reasonably demonstrates racial or ethnic bias.” *Commonwealth v. Pytou Heang*, 458 Mass. at 858. See also *Commonwealth v. McCowen*, ante 461, 494 (2010); *Commonwealth v. Semedo*, 456 Mass. 1, 22–24 (2010); Mass. G. Evid., § 606(b). “An extraneous matter may include an improper communication to a juror by a third party or improper consideration by a juror of information not in evidence.” *Id*. See also *Commonwealth v. Semedo*, *supra* at 22–23 *Commonwealth v. Fidler*, *supra* at 197.

Recognizing these limitations on the Court’s discretion for interviewing a juror post-verdict, defendant argues that a voir dire of the juror at issue is warranted because (1) the juror’s self-admitted mental health condition undermined their ability to make a reasoned and unanimous decision about defendant’s guilt; and (2) this condition is an extraneous factor that this court can consider when assessing whether the verdict or deliberations were tainted by outside forces. This court disagrees.

First, the letter received from the juror can best be summarized as a regret letter. While the juror does assert that she has mental health or personality disorder that disrupted her communications and relationships with other jurors, such tensions are not unusual between jurors when they are attempting to reach difficult decisions about a verdict regardless of the personalities involved. Furthermore, the juror’s letter does not support a finding that they was incompetent or unable to reason and reach an independent decision about defendant’s guilt. The fact that the juror felt pressured and even disparaged by the remaining jurors for failing to see the facts their way does not, without an allegation of racial or ethnic bias, warrant any further inquiry. *Commonwealth v. Pytou Heang*, 458 Mass. at 858.

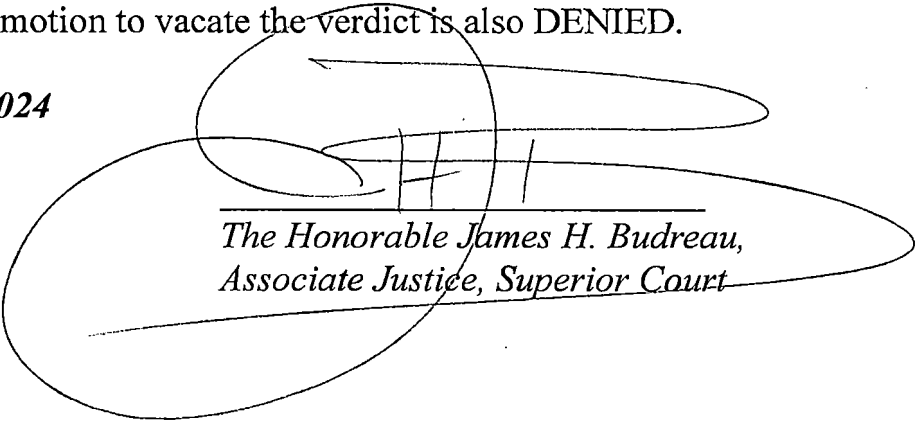
Second, this Court observed this juror during the empanelment process, the individual voir dire and trial. At no time did this Court observe any behavior or conduct that would suggest this juror was unable to perform their duty as an impartial and fair juror. Not only were both parties content with this juror after the individual voir dire, but neither party complained that this juror was inattentive or distracted during trial. Finally, the defense did not ask to poll the jury after the verdict was read and this Court made no observations of this juror that would have caused a sua sponte polling by the Court. While the juror may have regretted their decision post-verdict, that simply is not grounds for further inquiry.

Commonwealth v. Pytou Heang, supra. There is no support for the defendant's position that this juror's alleged extraneous mental health condition infringed upon, tainted or otherwise undermined the unanimity of this verdict. *Id.*²

ORDER

For the above reasons, defendant's motion for an evidentiary hearing is DENIED. Defendant's motion to vacate the verdict is also DENIED.

Dated: April 1, 2024



*The Honorable James H. Budreau,
Associate Justice, Superior Court*

² This assumes that this juror's disorder qualifies as an extraneous factor that could warrant the vacating of a verdict. While there is no case law on this issue, there are certainly circumstances where this Court could envision a severe mental health condition or personality disorder, i.e., when competency has lapsed during deliberations, might qualify for the type of extraneous factor contemplated by appellate courts for permissible inquiry to assess the validity of a verdict. This was not the case here.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Mass. R. A. P. 11; Mass. R. A. P. 16(a)(13); Mass. R. A. P. 16(e); Mass. R. A. P. 18; Mass. R. A. P. 20; and Mass. R. A. P. 21. The brief is printed in Century Schoolbook font and the Argument Section does not exceed 2,000 words. That section consists of 1,971 words as tallied by the word count function of Microsoft Word.

June 3, 2025

Date

/s/ John P. Warren

John P. Warren

Law Office of John P. Warren

132 Lincoln Street, Suite 5L

Boston, MA 02111

BBO #685597

(617) 383-4482

john@johnpwarrenlaw.com

CERTIFICATE OF SERVICE

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

Brooke Hartley, Esq.
Office of the District Attorney/Suffolk
1 Bulfinch Place
Boston, MA 02114

on this 3rd day of June, 2025.

/s/ John P. Warren
John P. Warren