

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

APPEALS COURT NO. 19-P-0875
AFAR NO. _____

COMMONWEALTH

vs.

JOSE CORREIA

Application for Further Appellate Review

The Defendant invites this Court to clarify that *Commonwealth v. Camacho*, 472 Mass. 587 (2015), did not abrogate *Commonwealth v. Chambers*, 465 Mass. 520 (2013) (prior acts of violence admissible to prove who initiated the use or threat of deadly force into a physical conflict). In the case at bar, the Appeals Court held that evidence of prior violence is ***per se inadmissible*** to prove whether an alleged victim used deadly force to punch the Defendant. The panel admitted that the jurisprudence on which it relied “does not bear close scrutiny” (M&O at 7). However, the Appeals Court determined that the result was nonetheless required pursuant to *Commonwealth v. Camacho*, which the Appeals Court interpreted as partially arrogating *Chambers* or as restricting it to cases involving weapons.

1. Request for Further Appellate Review.

Pursuant to Mass. R. App. P. 27.1, the Plaintiff seeks further appellate review of the Appeals Court's decision in *Commonwealth v. Jose Correia*, Appeals Court No. 19-P-0875, which issued on December 31, 2020.

2. Statement of Prior Proceedings

On or about March 12, 2014, the Defendant was indicted on the charge of Assault and Battery with a Dangerous Weapon ("ABDW"), together with other charges. (R.A. 17.)¹ On or about September 10, 2015, the Defendant filed a motion for production of Boston Police Department internal-affairs records regarding the alleged victim, a former police officer who had committed assaults while on duty. (R.A. 26.) The Defendant sought the name of civilian witnesses to the former officer's prior violence so that the witnesses could provide *Adjutant* evidence testify at the Defendant's trial. (*Id.*) The Defendant sought to obtain and introduce details of the violence that had caused serious bodily injury. The Defendant intended to prove thereby that, when the alleged victim punched the Defendant in the face, the alleged victim had used deadly force. *See Commonwealth v. Adjutant*, 443 Mass. 649 (2005) (prior acts of violence relevant to prove identity of first aggressor), and *Commonwealth v. Chambers*, 465 Mass. 520 (2013) (prior acts of violence relevant to prove identity of the party who first introduced deadly force into a physical conflict).

The motion was denied by endorsement, and the Defendant never learned the names of the people the alleged victim had previously battered. (R.A. 92.) The jury acquitted the Defendant of a number of charges but convicted him of the single count of ABDW. (R.A. 11.) The Defendant was sentenced on July 13, 2017 (R.A. 12); judgment issued (*Id.*); and the Defendant noted an appeal that same day (R.A. 13-14). The appeal was denied.

¹ Throughout this Application, the Defendant provides citation to the Record Appendix as submitted to the Appeals Court as "(R.A. [page number])" and citation to the transcript as "(Tr. [volume number]:[page number].)"

The Appeals court ruled that, although *Adjutant* evidence is generally admissible to prove who “who initiated the use or threat of deadly force,” *Chambers*, 465 Mass. at 530, *Camacho* prohibits using it to prove the degree of force used. The key distinction, as the Appeals Court interpreted *Camacho*, was between proving, (1) who initiated the use of deadly force (prior violence admissible) and (2) whether the force the person used was in fact deadly (prior violence inadmissible). The Appeals Court opined that the distinction would “not bear close scrutiny” but nonetheless affirmed the conviction under principles of *stare decisis*. (M&O at 7.)

3. Facts Relevant to the Appeal

According to Brian Guilfoyle, alleged victim and former member of the Boston Police Department, Mr. Guilfoyle punched the Defendant in the face, causing him to fall down. Mr. Guilfoyle then chased the Defendant’s friend, grabbed him by the shirt, and began punching him as well. At that point, the Defendant got up from the ground and came after Mr. Guilfoyle with a piece of pipe, striking him until he released the Defendant’s friend. (Tr. 3:41.) Mr. Guilfoyle responded by punching the Defendant in the face repeatedly until the Defendant was unconscious. (Tr. 3:22.)

At trial, a key issue was the propriety of the Defendant’s using a metal pipe to strike Mr. Guilfoyle. The defense argued that it was justified defense of another. The prosecution argued that it was excessive force. (*See* Tr. 5:11.) The court properly instructed the jury that, if it determined that the swinging of the pipes was deadly, the action was justified only if the Defendant reasonably concluded that Mr. Guilfoyle had

used deadly force against the Defendant or was then using deadly force against the Defendant's friend.²

Before trial, the defense anticipated that the question of who had introduced deadly force would be determinative as to the charge of ABDW. Accordingly, the defense had filed a motion for internal affairs records of the alleged victim, a former police officer, citing *Commonwealth v. Wanis*, 426 Mass. 639, 645 (1998) (a police department's internal affairs records subject to subpoena upon demonstration that the information is "relevant to a material issue in the criminal proceedings and could be of real benefit to the defense.") (R.A. 26 *et seq.*) In Internal Affairs Investigation IA No. 176-10, Mr. Guilfoyle had been investigated for serious brutality. (R.A. 45-91.) He then voluntarily resigned, claiming that PTSD had left him too aggressive to continue the work. (Tr. 3:29-30.)

The complaining civilian in IA-176-10 had alleged that Mr. Guilfoyle threw a bottle at him (R.A. at 54), handcuffed him, locked him in a police car, and smacked his head repeatedly against the door of the car (R.A. at 74). One of the blows was hard enough that the civilian believed his nose had been broken. (*Id.*) Mr. Guilfoyle then began alternately asking the civilian nonsensical questions and punching him in the face. (R.A. at 79.) The defense had been provided redacted versions of the reports and sought unredacted versions with the name of the witnesses, so as to subpoena those witnesses to trial, where they could provide admissible evidence of Mr. Guilfoyle's bad character for

² The Court properly defined deadly force as "that intended to kill or seriously injure someone" (Tr. 5:79) and instructed the jury that, if the use of deadly force in self-defense is lawful only where a person "believed he was in immediate danger of great bodily harm or death" (Tr. 5:80).

violence. The Defendant specified that he sought to introduce the testimony because it would be relevant to prove “first aggressor” and cited *Adjutant* (2005). (*Id.*) In this context, the “definition of ‘first aggressor’ include[s] not only the person who initiated the confrontation, but also the person who initiated the use or threat of deadly force.” *Commonwealth v. Camacho*, 472 Mass. 587, 591–92 (2015).

The Commonwealth argued that the documents failed the *Wanis* relevancy test because testimony about Mr. Guilfoyle’s bad character for violence would not be admissible under *Adjutant*. It was undisputed that the alleged victim punched first and that the Defendant had “introduced the dangerous weapon (pipes).” The Commonwealth argued that, absent a dispute about who struck first or who first introduced a weapon, *Adjutant* evidence was be inadmissible to prove who introduced deadly force. For this argument, the Commonwealth cited *Camacho* (finding no factual dispute as to who first introduced force or deadly force where video shows altercation in its entirety). (R.A. 95.) The Superior Court adopted the Commonwealth’s reasoning, and the Appeals Court affirmed.

The Appeals Court held that, under *Camacho*, *Adjutant* evidence could not be used to prove the forcefulness of a punch. *Adjutant* evidence could be used to prove only punched who and when: not how hard. Although concerned that the distinction imposed would “not bear close scrutiny,” the panel nonetheless affirmed the decision on *stare decisis* grounds. (M&O at 7.)

4. Point with respect to which the Plaintiff seeks further appellate review:

Whether prior acts of violence are admissible to prove that, when an alleged victim punched the Defendant in the face, the alleged victim introduced deadly force.

5. Why further appellate review is appropriate.

Further appellate review is in the public interest and the interest of justice because the Appeals Court has indicated that it currently constrained to distinguish between (1) a person's introducing deadly force and (2) a person being the person who introduces deadly force, a distinction that "does not bear close scrutiny" (M&O at 7.)

Per the rule as articulated in the appellate decision, a defendant may use *Adjutant* evidence to prove *who introduced deadly force*. Be he cannot use *Adjutant* evidence to prove whether *the force was in fact deadly*. The distinction is convoluted, incoherent, impossible to apply, and serves no desirable purpose. It is in the interest of justice and the public interest that courts do *not* have to apply this test for admissibility of *Adjutant* evidence.

1. Adjutant and Chambers

In *Adjutant*, this Court held that "where the identity of the first aggressor is in dispute and the victim has a history of violence, ... the trial judge has the discretion to admit evidence of specific acts of prior violent conduct that the victim is reasonably alleged to have initiated, to support the defendant's claim of self-defense" and such evidence "may be admitted as tending to prove that the victim and not the defendant was likely to have been the 'first aggressor' " because it may show "that the victim acted in conformance with his character for violence." *Adjutant*, 443 Mass. at 654. The purpose of *Adjutant* evidence "is to give the jury a full picture of the altercation so as to make an informed decision about the identity of the initial aggressor." *Commonwealth v. Pring-Wilson*, 448 Mass. 718, 737 (2007).

This Court subsequently clarified that the “definition of ‘first aggressor’ included not only the person who initiated the confrontation, but also the person who initiated the use or threat of deadly force.” *Commonwealth v. Camacho*, 472 Mass. 587, 591–92 (2015) (citing *Commonwealth v. Chambers*, 465 Mass. at 529-530). “Where a victim's prior act or acts of violence demonstrate a propensity for violence, we conclude that *Adjutant* evidence is as relevant to the issue of who initiated the use or threat of deadly force as it is to the issue of who initiated an earlier nondeadly assault, and such evidence may be admitted to assist the jury where either issue is in dispute, because the resolution of both issues may assist the jury in deciding whether the prosecution has met its burden of proving that the defendant did not act in self-defense.” *Commonwealth v. Chambers*, 465 Mass. at 529–30 (2013). In *Chambers*, “the critical question in determining whether the Commonwealth proved that the defendant did not act in self-defense when he killed the victim was who first grabbed the kitchen knife that ultimately was the instrument of death[.]” *Id.* 465 Mass. at 530. But the *Chambers* holding was not limited on its face to scenarios involving knives or dangerous weapons. This court held that *Adjutant* evidence was admissible “where the evidence was unclear as to which party first used or threatened deadly force.” *Id.* The question deadly force in *Chambers* turned on who had grabbed a knife, but not all deadly force involves knives or even weapons. The *Chambers* holding clearly encompassed other cases where the introduction of deadly force might occur in other ways.

The purposes of *Adjutant* evidence “is to give the jury a full picture of the altercation,” *Pring-Wilson*, 448 Mass. at 737, and it is therefore not admissible when the identity of the first person to use or threaten force and deadly force is undisputed:

“*Chambers* merely expanded *Adjutant* to hold that “[w]here a victim's prior act or acts of violence demonstrate a propensity for violence, ... *Adjutant* evidence is as relevant to the issue of who initiated the use or threat of deadly force as it is to the issue of who initiated an earlier nondeadly assault, and such evidence may be admitted to assist the jury where either issue is in dispute” *Camacho*, 472 Mass. at 593 (quoting *Chambers*, 465 Mass. at 529-530).

2. *Camacho*

In *Camacho*, this Court ruled that admission of *Adjutant* material was not proper because (1) the victim had not been involved in the fight that led to the shooting and because (2) the degree of force used by each participant was not disputed. “[T]he surveillance footage reveals that the victim was not with either group during the skirmish. Rather, the victim moved toward the back of the stage and out of the screen almost two and one-half minutes before [the bottle throwing]; he remained there until after the defendant began shooting, and he reentered the screen while attempting to flee gunfire. As there was no evidence that the victim played any role in the brawl or posed any threat to the defendant or the defendant's group, evidence of his prior violent conduct is not probative of why the defendant shot him.” *Camacho*, 472 Mass at 595.

Because the victim in *Camacho* was not part of the physical altercation at issue and because there was no dispute about how much force was used when, *Adjutant* evidence was not probative with respect to any disputed fact. Even if the forcefulness of the third-party bottle throwing proved relevant, the forcefulness of the throw was not disputed. There might be a dispute as to “which act, the bottle throwing or the gun firing, escalated the fight into a deadly confrontation” *id.*, but the character of the bottle-thrower

and the shooter would not shed light on what the video revealed. “Surveillance footage and independent witness testimony alike establish that [a third party] began the fight by throwing a bottle at [another third party, who] tackled [him], [they] fell to the ground, a melee ensued where individuals from the victim's group jumped on [the bottle-thrower] and started to hit him, and the defendant began firing a gun into the crowd” striking the victim. *Id.*

“Given this largely undisputed evidence, the primary question for the *Camacho* jury was not [who escalated the conflict to deadly force], but rather whether the defendant was legally entitled to use the force that he did in defense of another.” *Id.* (emphasis added). This Court added a statement that, in the limited factual context of *Camacho*, was unexceptionable: “Neither the identity of the person who threw the bottle nor the identity of the person who fired shots is in dispute, and the limited sweep of *Adjutant* and *Chambers* does not authorize the introduction of evidence to shed light on any other question.” *Id.* 473 Mass. at 594. This court did not explicitly include “the force of the bottle throwing” in its list of facts not in dispute, presumably because it would have been irrelevant in context.

3. The effect of *Camacho*

This Court, in *Camacho*, did not discuss the counterfactual *where the degree of force might be disputed*. Thus, this Court did not explicitly rule whether *Adjutant* evidence is admissible to prove degree of force *where it is disputed*.

The Appeals Court therefore concluded that *Adjutant* evidence is *not* admissible to prove degree of force used by the victim, *even where the sole dispute is whether the alleged victim introduced deadly force*. (M&O at 7.) The conclusion excludes

introduction of *Adjutant* evidence from the most routine of self-defense cases involving potentially deadly force in self defense.

For example, to act in lawful self-defense, a defendant must respond to an alleged victim's aggression only with reasonable force. To determine whether force was reasonable, a jury must determine (1) whether he used deadly force in self defense and, (2) if so, whether he was did so in response to a perceived deadly threat. *I.e.*, the defendant succeeds by proving that he “believe[d] that he was in immediate danger of death or serious bodily harm from which he could save himself only by using deadly force.” *Superior Court Model Jury Instruction* 02-04, at 1 (2013). “Deadly force is force that is intended or likely to cause death or serious bodily harm.” *Id.*

In a self-defense case involving deadly force, the defendant must prove that it was the alleged victim who first introduced deadly force into the conflict. This requires proving the degree of force that the alleged victim used. Proving the degree of force that the alleged victim used requires establishing how hard the alleged victim hit, punched, kicked, strangled, twisted, bit, or gauged a defendant with his hands and feet alone. (Not every use of deadly force involves a weapon.)

The Appeals Court's interpretation of *Camacho* undermines the purpose of *Adjutant*. The purpose of *Adjutant* evidence is to “give the jury a full picture of the altercation,” *Pring-Wilson*, 448 Mass. at 737, and to give the jury a basis to “weigh the credibility” of a defendant who asserts reasonable self-defense. *Adjutant*, 443 Mass. at 652. A person's character for violence is directly probative as to how hard that person hits, which is a central aspect of the altercation. Under this expansion of *Camacho*, a defendant cannot use *Adjutant* evidence to prove that the alleged victim used deadly

force, not even where the degree of force is both disputed and determinative. This excludes *Adjutant* material in one of the contexts where it would be most probative. This is not a reasonable jurisprudence.

The Appeals Court's interpretation of *Camacho* here is also unworkable. The distinction between proving that a person "introduced deadly force" and proving that "the force he introduced was deadly" is nonsensical. As such, it cannot be maintained with any consistency, leading to arbitrary results. In this case, If the Defendant had argued that the alleged victim was the first of the two of them to apply at least fifteen pounds of pressure to the other person during the fight, his "degree of force" argument would transform into an "identity of the person" argument, presumably resulting in admissibility. Admissibility should not depend arbitrarily on the framing of an argument for admissibility.

As the Appeals Court noted, the distinction between (1) introducing deadly force and (2) being the person who introduces deadly force does "not bear close scrutiny" (M&O at 7). This Court should clarify that the lower courts need not attempt to apply this admittedly unworkable distinction.

6. Conclusion

For the reasons argued here, this Court should grant further appellate review and clarify that *Adjutant* evidence is admissible where there is a dispute as to whether the victim, who initiated the physical conflict, also introduced deadly force.

Respectfully submitted,
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By Counsel,
/s/ Dana Goldblatt

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Commonwealth of Massachusetts

Appeals Court for the Commonwealth

At Boston

In the case no. 19-P-875

COMMONWEALTH

vs.

JOSE CORREIA.

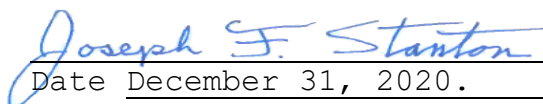
Pending in the Superior

Court for the County of Suffolk

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

Judgment affirmed.

By the Court,

, Clerk
Date December 31, 2020.

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

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-875

COMMONWEALTH

vs.

JOSE CORREIA.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendant was charged with unlicensed possession of a firearm, G. L. c. 269, § 10 (a); unlicensed carrying of a loaded firearm, G. L. c. 269, § 10 (n); discharging a firearm within 500 feet of a dwelling, G. L. c. 269, § 12E; assault and battery by means of a dangerous weapon (firearm), G. L. c. 265, § 15A (b); assault and battery by means of a dangerous weapon (metal pipes), G. L. c. 265, § 15A (b); and four counts of assault by means of a dangerous weapon (firearm), G. L. c. 265, § 15B (b). After trial, the defendant was convicted only of assault and battery by means of a dangerous weapon (metal pipes), and acquitted on all other charges. He now appeals.

Viewing the evidence in the light most favorable to the Commonwealth, the jury could have found as follows. This case arose from an altercation in the early morning hours of June 16,

2013, in the Dorchester section of Boston. The defendant along with Eric Silva and two or three other men were drinking in a driveway outside the building in which Dorothy Gates lived on the second floor with her son Michael Gates¹ and his friend Brian Guilfoyle. Bothered by noise, Dorothy called out to the men to leave, and the defendant responded by swearing at her. The defendant then began using bolt cutters to cut a chain securing a gate to the driveway. Dorothy yelled at the defendant to stop, which the defendant did only after swearing at her. The group of men left five minutes later, but soon returned and parked outside. Silva and the defendant were in the defendant's car with the defendant in the driver's seat and Silva in the passenger seat.

Dorothy called Michael and told him what was happening then and what had happened previously. Shortly thereafter, Michael and Guilfoyle arrived. They immediately confronted the defendant and Silva sitting in the defendant's car. They approached the car, Guilfoyle approaching the driver's side door where the defendant was sitting. Guilfoyle aggressively confronted the defendant about the confrontation with Dorothy. The defendant got out of the car. Guilfoyle, who was larger and heavier than the defendant, punched the defendant several times

¹ We refer to Dorothy Gates and Michael Gates by their first names to avoid confusion.

in the head, knocking him down. Guilfoyle then turned his attention to Silva, who was standing nearby with Michael. Guilfoyle aggressively confronted Silva and attacked him, punching Silva once or twice and ripping Silva's shirt off.

As Guilfoyle attacked Silva, the defendant retrieved two metal pipes from his car. The defendant attacked Guilfoyle with the pipes, striking him in the shoulder and hand. This action formed the basis of the defendant's conviction.

Guilfoyle was a former Boston Police Department (BPD) officer and in response to a public records request from the defendant pursuant to G. L. c. 66, § 10, the BPD produced records relating to seventeen internal affairs complaints involving Guilfoyle. The only one at issue is no. IA 176-01 (internal affairs file); the incident it describes occurred twelve years prior to the events at issue in this case. The redacted internal affairs file describes in detail a violent confrontation between Guilfoyle and an innocent suspect (victim): while the victim was handcuffed in a prisoner transport wagon, Guilfoyle slapped him so hard that the victim's head hit the interior wall of the wagon, and Guilfoyle repeatedly punched him in the head with both fists while falsely accusing him of drag racing and breaking into Guilfoyle's car.

The defendant filed a Mass. R. Crim. P. 17, 378 Mass. 885 (1979), motion calling for the production of an unredacted copy

of the internal affairs file, seeking the names of civilian witnesses whom he might call at trial. The motion was denied and the defendant appeals from that denial.

The defendant argues that he was entitled to the names of the civilian witnesses whose testimony might have been useful to demonstrate which party first introduced deadly force into the encounter between Guilfoyle and the defendant. See Commonwealth v. Chambers, 465 Mass. 520, 529-530 (2013); Commonwealth v. Adjutant, 443 Mass. 649, 664 (2005). The jury were instructed about the different rules of self-defense and defense of another, which permit the use of nondeadly force and the use of deadly force in certain circumstances. Although the case was not tried in a way that focused on the line between deadly and nondeadly force, the defendant argues that, with the testimony of civilian witnesses to the beating described in the internal affairs file, the jury might have concluded that the punches thrown by Guilfoyle prior to the defendant retrieving the metal pipes amounted to the introduction of deadly force, rather than some lesser amount of force. The jury might, his argument proceeds, therefore have concluded that the defendant's own use of the metal pipes was a commensurate use of force in defense of Silva, something the jury's guilty verdict demonstrates that they did not conclude.

To begin with, we note that this argument was not raised below. The defendant's written submission did not argue that the civilian witnesses to the events described in the internal affairs file might have had evidence relevant to who introduced deadly force.² Consequently, the defendant is entitled to relief only if he can demonstrate that there was both error and that it created a substantial risk of a miscarriage of justice. See Commonwealth v. Alphas, 430 Mass. 8, 13 (1999).

Adjutant created an exception to the ordinary rule of evidence that character evidence may not be introduced for purposes of showing action in conformity with character. In Adjutant, 443 Mass. at 664, the Supreme Judicial Court held that "where the identity of the first aggressor is in dispute and the victim has a history of violence, . . . the trial judge has the discretion to admit evidence of specific acts of prior violent conduct that the victim is reasonably alleged to have initiated, to support the defendant's claim of self-defense," regardless of whether the defendant knew of the victim's prior violent acts. The court held that such evidence "may be admitted as tending to prove that the victim and not the defendant was likely to have

² At trial, the defendant disclaimed any argument that Adjutant required the Commonwealth to turn over the unredacted internal affairs file. It may be that the submission preserved a claim that the evidence was relevant to the identity of the party who introduced a weapon into the fight; it did not say, and thus did not preserve the claim, that the evidence was needed to demonstrate which party introduced deadly force into the fight.

been the 'first aggressor'" because it may show "that the victim acted in conformance with his character for violence." Id. at 654.

In Commonwealth v. Chambers, 465 Mass. 520, 529-530 (2013), the Supreme Judicial Court expanded Adjutant by saying that evidence of a victim's character for initiating violence "is as relevant to the issue of who initiated the use or threat of deadly force as it is to the issue of who initiated an earlier nondeadly assault, and such evidence may be admitted to assist the jury where either issue is in dispute." Chambers was a case about who unreasonably escalated an altercation.

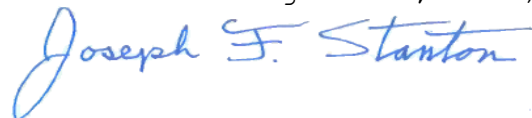
The defendant argues that what is at issue here is the identity of who introduced deadly force into the confrontation. As we read Commonwealth v. Camacho, 472 Mass. 587, 594-595 (2015), however, in that case the Supreme Judicial Court foreclosed this argument. Of course, the question of which person's act was the first that amounted to the use of deadly force is in some sense a question about the identity of the party who introduced deadly force into the confrontation, not in the sense that either of the participants who engaged in a particular act is unknown or might be someone else, but in the sense that the evidence bears on who, precisely, introduced deadly force. However, the Supreme Judicial Court held in Camacho, supra, that the question of who escalated the force

across the line of deadly force was distinct from the question of the identity of who engaged in each violent act, and that when the latter is known, the rule in Chambers allowing in evidence of past violent acts is not applicable. Here, where it was undisputed that Guilfoyle was the first aggressor, that he threw several punches to the head of the defendant with sufficient force that they knocked the defendant down, and that he continued to punch Silva before Silva was able to flee, there is no dispute about the sequence of the various uses of force, or who engaged in them. Although we are not certain the distinction drawn by Camacho bears close scrutiny, it is clear that the defendant here seeks to prove through character evidence who escalated the confrontation, just in the way the court rejected in Camacho.

As we therefore see no error, the judgment is affirmed.

So ordered.

By the Court (Rubin,
Desmond & Englander, JJ.³),



Clerk

Entered: December 31, 2020.

³ The panelists are listed in order of seniority.

**Certificate of Compliance
Pursuant to Rule 16(k) of the
Massachusetts Rules of Appellate Procedure**

I, Dana Goldblatt, hereby certify that the foregoing Application for Further Appellate Review complies with the rules of court that pertain to the filing of briefs, including, but not limited to:

Mass. R. A. P. 16 (e) (references to the record);

Mass. R. A. P. 20 (form and length of briefs, appendices, and other documents); and

Mass. R. A. P. 21 (redaction).

I further certify that the foregoing Application for Further Appellate Review complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the proportional font Times New Roman at size 12, and contains 1826 total non-excluded words as counted using the word count feature of Microsoft Word.

MASSACHUSETTS APPEALS COURT

John Adams Courthouse
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Boston, MA 02108
(617) 725-8106

<http://www.mass.gov/courts/appealscourt/>

Docket Number 19-P-0875

Jose Correia

Appellant(s)

v.

Commonwealth

Appellee(s)

CERTIFICATE OF SERVICE

Pursuant to Mass.R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on this date of February 4, 2021
I have made service of a copy of the following document(s):

Application for Further Appellate Review
Motion to Extend Time to File Application for Further Appellate Review

upon the attorney of record for each party, or if the party has no attorney then I made service directly to the self-represented party, by

☐ hand delivery ☐ first class mail

to the following person(s) and address(es). *Attach a separate page if more space is necessary.*

John P. Zanini, By submission through the Odyssey File and Serve portal.

Cailin Campbell, By submission through the Odyssey File and Serve portal.

Andrew S. Doherty, by email at andrew.doherty@.state.ma.us

/s/ Dana Goldblatt

Signature

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Printed Name and BBO# (if applicable)

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