

S.J.C. No. DAR-____
App. Ct. No. 22-P-917

Commonwealth of Massachusetts

Supreme Judicial Court

COMMONWEALTH,
Appellee,

vs.

JOSEPH W. JAMES,
Defendant-Appellant.

ON APPEAL FROM AN ORDER OF THE
NORFOLK COUNTY SUPERIOR COURT

APPLICATION FOR DIRECT APPELLATE REVIEW

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November 17, 2022

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REQUEST FOR DIRECT APPELLATE REVIEW

The Government seizes a citizen's property pursuant to a valid warrant, and the citizen subsequently pleads guilty to a crime. Some of the seized property was contraband or evidence of the crime—but not all of it. May the Government nevertheless keep *all* the property, without even seeking (let alone obtaining) an order of forfeiture, or indeed providing any process whatsoever?

The Commonwealth and the Superior Court say yes. And that answer finds some support in a precedential Appeals Court opinion. But the State and Federal Constitutions forbid takings of private property without just compensation and deprivations of property without due process of law. And the General Laws establish procedures for the forfeiture of non-contraband property seized pursuant to a warrant, requiring a jury trial after notice to all interested parties.

Pursuant to Mass. R.A.P. II, appellant Joseph James now requests that this Court allow direct appellate review and hold that where the Commonwealth failed to abide by those procedures, Mr. James was legally and constitutionally entitled to the return of his property.

PRIOR PROCEEDINGS

On June 6, 2017, a Norfolk County grand jury returned indictment No. 1782-CR-194, charging Joseph James with eight counts of aggravated statutory rape, G.L. c.265, §23A(b), and three counts of child enticement, G.L. c.265, §26C(b). Mr. James was arraigned on June 28, 2017, and pleaded not guilty. A second indictment, No. 1882-CR-51, charging one count of possession of child pornography, was returned on February 20, 2018. Mr. James was arraigned on that charge on March 6, 2018, and again pleaded not guilty.

On April 11, 2018, Mr. James entered into a global plea agreement with the Commonwealth and changed his plea to guilty in both cases. Pursuant to the agreement, the eight counts of aggravated statutory rape were reduced to simple statutory rape, G.L. c.265, §23. The plea judge (Connors, J.) accepted the plea and adopted the parties' joint sentencing recommendation: on the 2017 indictment, concurrent terms of seven years in state prison on counts 1–7, with concurrent three-year terms of probation to follow on counts 8–11; on the 2018 indictment, a five-year state prison sentence to run concurrently with the other committed sentences.

On August 29, 2018, Mr. James filed a motion for return of property. A non-evidentiary hearing was held on that motion on September 19, 2018, before a different judge (Cosgrove, J.). Judge Cosgrove took the motion under advisement, and on October 3 issued an order allowing it as to items the Commonwealth had agreed to return, but denying it insofar as it was contested. Mr. James filed a timely notice of appeal on November 2, 2018, and the case was eventually entered in the Appeals Court on November 17, 2021.

The Appeals Court subsequently allowed Mr. James's request for a stay of appellate proceedings in order to file a renewed motion in the Superior Court. That motion was filed on April 21, 2022, and Judge Cosgrove denied it without hearing on September 1, 2022. Mr. James filed a second notice of appeal on September 6. The appeal from the renewed motion was entered in the Appeals Court on September 21, 2022, and consolidated with the appeal of the original motion.

STATEMENT OF FACTS

After receiving a report of an inappropriate relationship between defendant Joseph James and a teenage girl, the Commonwealth obtained a warrant and seized Mr. James's computer and other property. An inspection of six hard disk drives revealed that one (but only one) contained evidence of criminal offenses, including communications between Mr. James and the victim, as well as nude and partially nude photos that she had sent him. Mr. James was arrested and his cell-phone was seized; nothing of evidentiary value was found on it.

Mr. James eventually pleaded guilty to multiple offenses. Following his conviction, he moved for the return of property that had been seized from him and not found to be contraband or evidence of his crimes. The Commonwealth agreed to return much of the seized property, including one of the hard drives. But it refused to return the other hard drives or Mr. James's cellphone, and the Superior Court denied Mr. James's motions for their return. The Commonwealth's stated intention is to keep those items until Mr. James has fully served his sentence, and then destroy them.

Mr. James, who earns his living as a professional photographer, is particularly anxious to regain possession of his hard drives because they contain his entire business portfolio. That portfolio is essential to Mr. James's livelihood in multiple ways. It is vital for advertising purposes and represents an important ongoing income stream, as customers often return to ask for new or different edited copies of photos from past shoots. Moreover, Mr. James is not the only one with a keen interest in the intellectual property contained on these hard drives. His clients often retain certain contractual rights in the photos

he shoots for them, including owning the copyrights in some cases. And at least one of Mr. James's clients has never received the photos that Mr. James took of his wedding—for which the client has already paid—because police seized Mr. James's computer before he had a chance to edit and deliver those photos.

The Commonwealth, however, has refused to return all but one of Mr. James's hard drives. The Commonwealth has not denied that Mr. James is the property's rightful owner. Nor has the Commonwealth meaningfully contested Mr. James's sworn claim that the items whose return he seeks do not contain any images of the victim in this case or other "items of evidentiary value." Indeed, the forensic reports prepared by the State Police who inspected the hard drives specifically state that most of them contain "nothing of evidentiary value" or "nothing related to the matter at hand."

Rather, the Commonwealth's refusal stems primarily from contents of the hard drives unrelated to the crimes of which Mr. James was convicted. Specifically, in opposing Mr. James's request for the return of his property, the Commonwealth emphasized that the hard drives contain "dozens of nude images of unidentified females," which, it acknowledged, were "presumably created by [Mr. James] as part of his photography business." The Commonwealth has also claimed that some of those photos "may constitute child pornography if the subjects are under 18 years old." However, Mr. James has never been charged with any offense related to any of the images contained on the hard drives whose return he seeks. Moreover, he has submitted an affidavit attesting that he has never taken nude or sexualized photographs of anyone under the age of 18. And the Commonwealth has

not actually disputed that averment; it is uncontested that the photographs underlying Mr. James's child pornography conviction were taken by the victim herself, who then sent them to Mr. James.

ISSUES PRESENTED

Whether the Fifth and Fourteenth Amendments to the United States Constitution and arts. I, 10, and 12 of the Massachusetts Declaration of Rights permit the Commonwealth, after seizing a citizen's lawfully owned property pursuant to a valid search warrant, permanently to deprive that citizen of the property without complying with the procedural requirements of G.L. c.276, §§4–8; and whether the First Amendment and art. 16 permit the Commonwealth to base its decision to retain and destroy that property on its disapproval of the property's artistic contents.

These questions were squarely presented to the Superior Court in Mr. James's renewed motion for return of property. Although the Commonwealth opposed the motion in part on timeliness grounds, the motion judge exercised his discretion to consider and reject Mr. James's legal claims on the merits. The claims are thus properly preserved for this Court's review.

ARGUMENT

The Commonwealth's retention and proposed destruction of Mr. James's professional photography portfolio flouts the General Laws and violates Mr. James's fundamental constitutional rights.

"Although police may seize potential evidence using a warrant, they may not keep it forever." *Frein v. Pennsylvania State Police*, 47 F.4th 247, 250 (3d Cir. 2022). But that is just what the Commonwealth proposes to do here. Indeed, the Commonwealth means not just to keep

Mr. James’s hard drives, but to destroy them and the intellectual property they contain—including intellectual property in which third parties retain contractual interests. And the Superior Court ruled that the Commonwealth could do so, without notifying any of those third parties or otherwise complying with the procedural requirements of chapter 276 of the General Laws. That ruling violates the First, Fifth, and Fourteenth Amendments to the United States Constitution and articles 1, 10, 12, 15, and 16 of the Massachusetts Declaration of Rights.

The analysis in this case properly should “begin by acknowledging the strong constitutional protections against governmental deprivations of private property.” *Commonwealth v. Salmons*, 96 Mass. App. Ct. 61, 65 (2019). The Commonwealth’s retention and proposed destruction of the property here at issue—all of which is lawful to possess, and of which the Commonwealth does not deny that Mr. James is the rightful owner—is inconsistent with those fundamental constitutional protections. If the Commonwealth wants to destroy Mr. James’s property, it must initiate forfeiture proceedings and prove at trial that the property is subject to forfeiture. Moreover, before such a trial can occur, the Commonwealth must also provide effective notice to all other parties with a potential interest in any of the property.

Absent a valid judgment of forfeiture, there was no lawful basis for the Superior Court to deny Mr. James’s motion for his property to be returned. The judge’s order must be reversed.

1. *Chapter 276 of the General Laws contains strict procedural requirements that must be followed before non-contraband property may constitutionally be forfeited and destroyed, none of which have been observed in this case.*

The only statutory authority the Commonwealth has ever cited in support of its position in this case is G.L. c.276, §3. That statute does govern the disposition of property seized pursuant to a search warrant. *See generally Commonwealth v. Fleury*, 489 Mass. 421 (2022). It provides, with specific exceptions not here applicable, that such property “shall be disposed of as the court or justice orders and may be forfeited and either sold or destroyed, as the public interest requires, in the discretion of the court or justice.” G.L. c.276, §3.

The Commonwealth and the judge below effectively construed this statutory language to give a trial judge essentially unbridled discretion to decide what to do with any such property. And a precedential Appeals Court decision lends some support to that construction. *See Beldotti v. Commonwealth*, 41 Mass. App. Ct. 185 (1996). In *Beldotti*, a prisoner serving a life sentence for a brutal rape and murder—acting *pro se*—sought the return of various items that had been seized pursuant to a search warrant, including sexually explicit materials (some of which depicted “naked pubescent and prepubescent girls and boys”); sex toys and “bondage paraphernalia”; and some items specifically relating to the murder victim, including a photograph of her and the contents of her pocketbook. *Id.* at 186. The Appeals Court concluded that under the circumstances, it was “within the public interest to punish the offender for the criminal act by refusing to return the property.” *Id.* at 189. The court noted that the items at issue “can be seen as being directly related to” Mr. Beldotti’s offense of

conviction, during which “he photographed the victim’s naked torso after inserting dildos into her vagina and anus and after sexually mutilating her body.” *Id.* It therefore concluded that “to return the property would be so offensive to basic concepts of decency treasured in a civilized society, that it would undermine the confidence that the public has a right to expect in the criminal justice system.” *Id.* at 190.

The Appeals Court thus appears to have construed the directive in G.L. c.276, §3, that property seized pursuant to a warrant “may be forfeited and either sold or destroyed, as the public interest requires, in the discretion of the court,” to give a trial judge *carte blanche* to decide whether the public interest requires the forfeiture of such property. This parsing of the statutory language is highly questionable even on its own terms. The clause is better read to confer discretion on the judge to decide whether the public interest requires the *sale* or *destruction* of such property—but only once a valid order of forfeiture has been obtained.

The correctness of this construction of §3 is confirmed by chapter 276’s following sections, which set forth detailed procedures for obtaining such a forfeiture order. Section 4 provides that “[b]efore a decree of forfeiture of property seized under a search warrant is issued,” the court must issue notice to its alleged owner and “all other persons who claim an interest therein, to appear at a time and place therein named to show cause why the articles seized should not be forfeited.” G.L. c.276, §4. Section 6 makes plain that the forfeiture proceeding is to be a “trial,” and §8 provides for a *jury* trial whose procedure “shall conform so far as may be to proceedings in criminal cases”; the property may be “adjudged forfeited” only “upon final judgment” at that

trial. G.L. c.276, §8. The Appeals Court in *Beldotti* overlooked these provisions—perhaps due to the adversarial mismatch between the *pro se* prisoner and the able appellate prosecutor.

But the lack of any such procedural protections should have been a red flag for the Appeals Court, even in the face of a request as odious as the one at issue in *Beldotti*. Without those protections, the forfeiture provision of §3 would not comply with fundamental constitutional due process requirements, at least as applied to property that may be lawfully possessed. See, e.g., *Parratt v. Taylor*, 451 U.S. 527, 539–540 (1981). See generally *Mathews v. Eldridge*, 424 U.S. 319 (1976). Indeed, this Court so held a century and a half ago, the first time this search warrant forfeiture provision (which, at that time, did *not* incorporate these protections) came to its attention. See *Attorney General v. Justices of the Boston Municipal Court*, 103 Mass. 456, 468–469 (1869). The Legislature enacted the predecessors to G.L. c.276, §§4–8, in essentially their present form, in response to that ruling. See St.1870, c.242.

In the absence of a valid final judgment of forfeiture issued after the requisite notice, trial, and a finding beyond a reasonable doubt by a jury that the property is subject to forfeiture, the Commonwealth may not permanently deprive Mr. James of his property. Mr. James is entitled to a jury trial before any such permanent deprivation may occur, not only under G.L. c.276, §8, but also under arts. 12 and 15 of the Declaration of Rights. See *Commonwealth v. One 1972 Chevrolet Van*, 385 Mass. 198, 202–203 & n.7 (1982) (discussing forfeitures under c.94C). True, he waived his right to a jury trial on the criminal offenses. But the conviction itself does not establish that any of the property is subject to forfeiture save that which he necessarily admitted constitutes

contraband—*i.e.*, the unclothed images of the victim. See *Commonwealth v. Lottery Tickets*, 59 Mass. 369, 375 (1850) (authority to destroy *contraband* “may be incident to the conviction,” but the same is not true for property “not *mala in se*, in any legal sense”).

The absence of any valid legal basis for the Commonwealth to retain Mr. James’s property, combined with the Commonwealth’s admission that Mr. James rightfully owns that property, means that the only lawful disposition the Superior Court properly could make as to that property under G.L. c.276, §3, was to return it to Mr. James or his designated representative. See *Nelson v. Colorado*, 137 S. Ct. 1249, 1257 (2017) (state may not withhold property to which it “has zero claim of right”). Any other disposition would violate Mr. James’s rights under the Fifth and Fourteenth Amendments and arts. I, 10, and 12.

In addition, the Commonwealth’s proposed destruction of the property without the requisite notice and opportunity to be heard for “all other persons who claim an interest therein,” G.L. c.276, §4, violates the rights of numerous third parties. As Mr. James made clear in his affidavit, all of the clients of his photography business have a continuing interest in being able to access the photographs he took for them. Indeed, some of the clients legally own the copyrights in those images. The Commonwealth now proposes to destroy the only existing copies of many of those photos, without notifying any of Mr. James’s clients or giving them any chance to object. This is not permissible. The judge’s order must be reversed.

2. *The Commonwealth's refusal to return Mr. James's property based on the content of his artistic expression violates his rights under the First Amendment and art. 16.*

It is also noteworthy that the Commonwealth's refusal to return Mr. James's intellectual property to him is chiefly based on the content of that property, rather than on any alleged nexus to the crimes of which he was convicted. The Commonwealth did return one of Mr. James's hard drives, explaining that it was doing so because that drive only contained "some video games ... and other items that the Commonwealth's not concerned with." But it refused to return Mr. James's photography portfolio—even while admitting that it "did not contain images of the minor victim"—because it included "numerous nude images of unidentified females."

Absent proof that Mr. James's art constitutes obscenity or child pornography, that art is constitutionally protected. *See Commonwealth v. Kaupp*, 453 Mass. 102, 112 (2009), *citing Miller v. California*, 413 U.S. 15, 24–25 (1973). The Commonwealth submitted an affidavit from a State Trooper insinuating that some of the photographs at issue may constitute child pornography. But Mr. James has never been charged with any offense related to any of these photos. Presumably, if probable cause existed to believe that any of them actually were child pornography, such charges would have been forthcoming. And the trooper's affidavit makes plain that no such probable cause exists. It says only that he does not know the ages of the people in the photos, and that "some of these nude or semi-nude images of unidentified females may constitute child pornography if the subjects are under 18 years old." An assertion by a law enforcement officer that he *does not know* if a crime has been committed falls far short of probable cause. In any

event, especially given the otherwise constitutionally protected nature of this property, any assertion that it constituted uncharged contraband would need to be proved beyond a reasonable doubt at trial before it could be subject to forfeiture. See G.L. c.276, §8; arts. 12 & 15.

“As a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *United States v. Stevens*, 559 U.S. 460, 468 (2010), *quoting Ashcroft v. ACLU*, 535 U.S. 564, 573 (2002). This general rule certainly extends to the content-based retention and destruction of an artist’s entire portfolio. See, e.g., *Marcus v. Search Warrant*, 367 U.S. 717, 731–732 (1961). To the extent that the Commonwealth’s desire to destroy Mr. James’s property stems from its disapproval of his artistic expression, it constitutes a gross violation of his rights under the First Amendment and art. 16.

CONCLUSION

This appeal presents “questions of law concerning the Constitution[s] of the Commonwealth [and] of the United States” that are “of such public interest that justice requires a final determination by [this] Court.” Mass. R.A.P. 11(a). Until this Court’s opinion earlier this year in *Commonwealth v. Fleury*, *supra* (which did not address the statutory language here at issue), the Appeals Court’s decision in *Beldotti* was essentially the only published appellate precedent from the modern era regarding the search warrant forfeiture provisions in chapter 276. And as discussed above, that case is not just wrong as a matter of statutory interpretation—it is wrong in a way that risks wholesale violations of the Fifth and Fourteenth Amendments’ proscriptions against takings of private property without just compensation and

deprivations of property without due process of law, as well as the cognate provisions of arts. 1,¹ 10,² and 12³ of the Declaration of Rights.

The outcome in *Beldotti* certainly is understandable, particularly given the lack of learned counsel on one side of that litigation and the stomach-turning facts of the case. But its implicit holding that lawfully owned property, once seized pursuant to a valid search warrant, may be retained, sold, or destroyed by the State on a judge's whim, simply is not compatible with our society's commitment to robust property rights and the due process of law. Nevertheless, that holding has been the established law of the Appeals Court for more than a quarter century. This Court should take this opportunity to correct it.

Respectfully submitted,

JOSEPH W. JAMES

By his attorney,

/s/ Patrick Levin

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¹ “All people ... have certain natural, essential, and unalienable rights, among which may be reckoned ... that of acquiring, possessing and protecting property.”

² “Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws[, and] no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.”

³ “[N]o subject shall be ... despoiled, or deprived of his property ... or estate, but by the judgment of his peers, or the law of the land.”

1782CR00194 Commonwealth vs. James, Joseph W

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 06/06/2017
- DCM Track:
- C - Most Complex
- Initiating Action:
- RAPE OF CHILD c265 §23
- Status Date:
- 06/28/2017
- Case Judge:
-
- Next Event:
-

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

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/06/2017	Case assigned to: DCM Track C - Most Complex was added on 06/06/2017		
06/06/2017	Indictment(s) returned	1	Image
06/20/2017	Habeas Corpus for defendant issued to Norfolk County Correctional Center returnable for 06/28/2017 02:00 PM Arraignment. VIDEO HABE		
06/28/2017	Issued on this date: Mittimus in Lieu of Bail Sent On: 06/28/2017 14:18:53	2	
06/28/2017	Event Result: The following event: Arraignment scheduled for 06/28/2017 02:00 PM has been resulted as follows: Result: Held as Scheduled		
06/28/2017	Defendant arraigned before Court.		
06/28/2017	Defendant waives reading of indictment		
06/28/2017	Plea of not guilty entered on all charges.		
06/28/2017	Bail set at \$0.00 Surety, \$75,000.00 Cash. w/o prej. Judge: Pasquale, Hon. Gregg J		
06/28/2017	Bail warnings read		
06/28/2017	Defendant is ordered committed in lieu of having posted bail.		
07/06/2017	Attorney appearance On this date Melissa Rose Fournier, Esq. added as Appointed - Indigent Defendant for Defendant Joseph W James Appointment made for the purpose of Case in Chief by Judge Hon. Gregg J Pasquale.		
07/06/2017	Habeas Corpus for defendant issued to Norfolk County Correctional Center returnable for 11/07/2017 02:00 PM Pre-Trial Hearing. Applies To: James, Joseph W (Defendant); Norfolk County Correctional Center (Holding Institution)		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/06/2017	Commonwealth 's Statement of The Case	3	
07/06/2017	Commonwealth 's Motion for Protective Order Regarding Digital Extractions Of Alleged Victim's Cellular Telephones - ALLOWED (Pasquale, J.) copies sent to ada & attorney dated 6/28/17	4	
07/06/2017	Commonwealth 's Motion for Protective Order Regarding Discovery Of Sain Interview Recording - ALLOWED (Pasquale, J.) copies sent to ada & attorney	5	
09/01/2017	Event Result: The following event: Pre-Trial Conference scheduled for 09/06/2017 02:00 PM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date		
09/25/2017	Event Result: The following event: Pre-Trial Conference scheduled for 09/25/2017 02:00 PM has been resulted as follows: Result: Held as Scheduled		
10/02/2017	Pre-trial conference report filed filed 9/25/2017	6	
10/16/2017	Habeas Corpus for defendant issued to Norfolk County Correctional Center returnable for 10/30/2017 02:00 PM Bail Hearing.	7	
10/30/2017	Issued on this date: Mittimus in Lieu of Bail Sent On: 10/30/2017 14:29:42	8	
10/30/2017	Event Result: Judge: Krupp, Hon. Peter B The following event: Bail Hearing scheduled for 10/30/2017 02:00 PM has been resulted as follows: Result: Held as Scheduled		
11/01/2017	Habeas Corpus for defendant issued to Norfolk County Correctional Center returnable for 11/07/2017 02:00 PM Pre-Trial Hearing. Applies To: James, Joseph W (Defendant); Norfolk County Correctional Center (Holding Institution)	9	
11/07/2017	Event Result: Judge: Krupp, Hon. Peter B The following event: Pre-Trial Hearing scheduled for 11/07/2017 02:00 PM has been resulted as follows: Result: Held as Scheduled Appeared: Prosecutor Norfolk County District Attorney Defendant James, Joseph W Attorney Fournier, Esq., Melissa Rose Attorney Murphy, Esq., Erin Ct Rep: D Chapin Clerk: S Irwin Judge: Krupp, Hon. Peter B		
11/07/2017	Habeas Corpus for defendant issued to Norfolk County Correctional Center returnable for 01/19/2018 02:00 PM Lobby Conference.	10	
11/07/2017	Defendant 's Motion To Reconsider Bail Pursuant to Brangan and To Impose Financially Affordable Bail filed and endorsed: DENIED for the reasons stated on the record. (Krupp, J) 11/07/2017	11	
12/19/2017	Defendant 's Motion to To Impound Ex-Parte Motion For Funds - ALLOWED (Krupp, J.) Attest; J. McDermott, Asst. Clerk - copies sent to attorney Impounded Draw	12	
12/19/2017	Defendant 's EX PARTE Motion for Funds - ALLOWED at CPCS rates not to exceed \$1,500.00 (Krupp, J.) Attest; J. McDermott, Asst. Clerk - copies sent to attorney Impounded Draw	13	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/20/2017	Affidavit of Of Counsel from Melissa R. Fournier, Committee for Public Counsel Services Impounded Draw	14	
01/19/2018	Event Result: Judge: Miller, Hon. Rosalind H The following event: Lobby Conference scheduled for 01/19/2018 02:00 PM has been resulted as follows: Result: Held as Scheduled - not reached by court - continued 3/6/18 lobby - (Connors, J.) Attest; B. Roche, Asst. Clerk - FTR ct. rm 25 Judge: Miller, Hon. Rosalind H Judge: Miller, Hon. Rosalind H		
01/22/2018	Habeas Corpus for defendant issued to Norfolk County Correctional Center returnable for 03/06/2018 02:00 PM Lobby Conference.	15	
01/24/2018	Commonwealth 's Motion for Protective Order Regarding Forensic Examination Of Defendant's Hard Drives - SO ORDERED: (Miller, J.) - copies sent to ada & attorney Judge: Miller, Hon. Rosalind H	16	
03/06/2018	Event Result: Judge: Wilson, Hon. Paul D The following event: Lobby Conference scheduled for 03/06/2018 02:00 PM has been resulted as follows: Result: Held as Scheduled		
03/07/2018	Commonwealth 's Notice of Discovery	17	
03/07/2018	Defendant 's Motion To Impound Ex-Parte Motion For Funds ALLOWED (Wilson, J) 03/08/2018	18	
03/07/2018	Defendant 's EX PARTE Motion For Funds (IMPOUNDED) Endorsed: "ALLOWED, at usual CPCS rates, up to the requested amount." (Wilson, J) 03/08/2018	19	
04/11/2018	Event Result: Judge: Cosgrove, Hon. Robert C The following event: Lobby Conference scheduled for 04/11/2018 02:00 PM has been resulted as follows: Result: Rescheduled Reason: Transferred to another session		
04/11/2018	Event Result: Judge: Connors, Hon. Thomas A The following event: Hearing for Change of Plea scheduled for 04/11/2018 02:00 PM has been resulted as follows: Result: Held as scheduled		
04/11/2018	Defendant sentenced:: Sentence Date: 04/19/2018 Judge: Hon. Thomas A Connors Attest: B. Roche, a.c. FTR Charge #: 8 RAPE OF CHILD, c265 §23 3 years probation from & after prison sentence on 1782CR00194-001. Conditions: mental health evaluation and treatment including aftercare 2. sign and don't rescind all releases 3. register with the sex offender registry board and abide by all S.O.R.B. conditions 4. GPS with exclusionary zones of victims, home school and future work 5. absolutely no contact with victim; this condition begins forthwith 6. no unsupervised contact with children under 16 years of age; an exception is made for Defendant's own children and potential grandchildren 7. pay monthly PSF Fee Charge #: 9 ENTICE CHILD UNDER 16 c265 §26C(b) concurrent with 1782CR00194-008 Charge #: 10 ENTICE CHILD UNDER 16 c265 §26C(b) concurrent with 1782CR00194-008 Charge #: 11 ENTICE CHILD UNDER 16 c265 §26C(b) Concurrent with 1782CR00194-008 Probation: Risk/Need Probation Duration: 3 Years, 0 Months, 0 Days		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
04/11/2018	Defendant waives rights. Judge: Connors, Hon. Thomas A	20	
04/11/2018	Plea colloquy given. Judge: Connors, Hon. Thomas A		
04/11/2018	Defendant warned pursuant to alien status, G.L. c. 278, § 29D. Judge: Connors, Hon. Thomas A		
04/11/2018	Defendant warned as to submission of DNA G.L. c. 22E, § 3 Judge: Connors, Hon. Thomas A		
04/11/2018	Defendant sentenced.: Sentence Date: 04/11/2018 Judge: Hon. Thomas A Connors Charge #: 1 RAPE OF CHILD c265 §23 State Prison Sentence Not Less Than: 7 Years, 0 Months, 0 Days Not More Than: 7 Years, 0 Months, 1 Days Charge #: 2 RAPE OF CHILD c265 §23 State Prison Sentence Not Less Than: 7 Years, 0 Months, 0 Days Not More Than: 7 Years, 0 Months, 1 Days Served Concurrently Charge # 1 Case 1782CR00194-001 Charge #: 3 RAPE OF CHILD c265 §23 State Prison Sentence Not Less Than: 7 Years, 0 Months, 0 Days Not More Than: 7 Years, 0 Months, 1 Days Served Concurrently Charge # 1 Case 1782CR00194-001 Charge #: 4 RAPE OF CHILD c265 §23 State Prison Sentence Not Less Than: 7 Years, 0 Months, 0 Days Not More Than: 7 Years, 0 Months, 1 Days Served Concurrently Charge # 1 Case 1782CR00194-001 Charge #: 5 RAPE OF CHILD c265 §23 State Prison Sentence Not Less Than: 7 Years, 0 Months, 0 Days Not More Than: 7 Years, 0 Months, 1 Days Served Concurrently Charge # 1 Case 1782CR00194-001 Charge #: 6 RAPE OF CHILD c265 §23 State Prison Sentence Not Less Than: 7 Years, 0 Months, 0 Days Not More Than: 7 Years, 0 Months, 1 Days Served Concurrently Charge # 1 Case 1782CR00194-001 Charge #: 7 RAPE OF CHILD c265 §23 State Prison Sentence Not Less Than: 7 Years, 0 Months, 0 Days Not More Than: 7 Years, 0 Months, 1 Days Served Concurrently Charge # 1 Case 1782CR00194-001 Committed to MCI - Cedar Junction (at Walpole) Credits 377 Days		
04/11/2018	Issued on this date: Mitt For Sentence (First 6 charges) Sent On: 04/11/2018 16:15:01	21	
04/11/2018	Issued on this date: Mitt For Sentence (First 6 charges) Sent On: 04/11/2018 16:20:08	22	
05/02/2018	Defendant 's EX PARTE Motion for Funds II *IMPOUNDED* Filed on 5/2/18. Copy sent to Defense Attorney	23	
05/02/2018	Endorsement on *IMPOUNDED* Ex-Parte Motion for Funds II- ALLOWED by Judge Cosgrove, on 5/2/18 Attest: JMD, Clerk, (#23.0): ALLOWED Judge: Cosgrove, Hon. Robert C		
05/02/2018	Affidavit of of Counsel In Support of ex-Parte Motion For Funds II *IMPOUNDED*	24	
05/02/2018	Defendant 's Motion to *IMPOUND* Ex-Parte Motion for Funds II- Filed on 5/2/18	25	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
05/03/2018	Endorsement on Defendant's Motion to *IMPOUND* Ex-Parte Motion for Funds II Allowed Until the Conclusion of the Case, by Judge Cosgrove, Attest: JMD on 5/2/18, (#25.0): ALLOWED Judge: Cosgrove, Hon. Robert C		
09/17/2018	Commonwealth 's Motion for leave to destroy and dispose of certain digital media and contraband obtained by consent of minor victim's parents - filed 9/17/2018	26	
09/17/2018	Commonwealth 's Motion for leave to destroy and dispose of certain computer equipment, digital media and contraband seized from Defendant via search warrant - filed 9/17/2018	27	
09/19/2018	Event Result:: Motion Hearing scheduled on: 09/19/2018 02:00 PM Has been: Held as Scheduled Comments: ADA M. McGee with ADA Murphy for Commonwealth. Defendant present. FTR Rm 1 -- L Everett Hon. Robert C Cosgrove, Presiding Appeared: Prosecutor Norfolk County District Attorney Erin Murphy, Esq., Defendant Joseph W James Melissa Rose Fournier, Esq., Appointed - Indigent Defendant Staff: S Irwin A/C Judge: Cosgrove, Hon. Robert C		
10/09/2018	Endorsement on Motion for leave to destroy and dispose of certain computer equipment, digital media and contraband seized from Defendant via search warrant, (#27.0): No Action Taken on this motion at this time - dated 10/3/2018. Copies mailed to ADA and Defense Judge: Cosgrove, Hon. Robert C		
10/10/2018	Endorsement on Commonwealth's Motion for Leave to Destroy and Dispose of Certain Digital Media and Contraband obtained by consent of Minor Victim's Parents-ALLOWED by Judge Cosgrove, on 10/3/18. Copies sent to Ada and Defense, (#26.0): Judge: Cosgrove, Hon. Robert C		
02/08/2022	Offense Disposition:: Charge #1 RAPE OF CHILD c265 §23 265/23/A-1 On: 04/11/2018 Judge: Hon. Thomas A Connors By: Hearing on Plea Offer/Change Guilty Plea Charge #2 RAPE OF CHILD c265 §23 265/23/A-1 On: 04/11/2018 By: Hearing on Plea Offer/Change Guilty Plea Charge #3 RAPE OF CHILD c265 §23 265/23/A-1 On: 04/11/2018 By: Hearing on Plea Offer/Change Guilty Plea Charge #4 RAPE OF CHILD c265 §23 265/23/A-1 On: 04/11/2018 By: Hearing on Plea Offer/Change Guilty Plea Charge #5 RAPE OF CHILD c265 §23 265/23/A-1 On: 04/11/2018 By: Hearing on Plea Offer/Change Guilty Plea Charge #6 RAPE OF CHILD c265 §23 265/23/A-1 On: 04/11/2018 By: Hearing on Plea Offer/Change Guilty Plea Charge #7 RAPE OF CHILD c265 §23 265/23/A-1 On: 04/11/2018 By: Hearing on Plea Offer/Change Guilty Plea Charge #8 RAPE OF CHILD c265 §23 265/23/A-1 On: 04/11/2018 Judge: Hon. Thomas A Connors By: Hearing on Plea Offer/Change Guilty Plea		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	<p>Charge #9 ENTICE CHILD UNDER 16 c265 §26C(b) On: 04/11/2018 By: Hearing on Plea Offer/Change Guilty Plea</p> <p>Charge #10 ENTICE CHILD UNDER 16 c265 §26C(b) On: 04/11/2018 By: Hearing on Plea Offer/Change Guilty Plea</p> <p>Charge #11 ENTICE CHILD UNDER 16 c265 §26C(b) On: 04/11/2018 By: Hearing on Plea Offer/Change Guilty Plea</p>		
02/15/2022	Attorney appearance On this date Patrick Levin, Esq. added for Defendant Joseph W James		Image
04/22/2022	Defendant 's Motion (RENEWED) for Return of Property	28	Image
04/22/2022	Affidavit of Defendant	29	Image
04/22/2022	Joseph W James's Memorandum in support of Renewed Motion for Return of Property	30	Image
06/01/2022	Issued on this date: Mittimus for Sentence (All Charges) Sent On: 06/01/2022 12:47:09	31	
06/01/2022	Issued on this date: Mittimus for Sentence (All Charges) Sent On: 06/01/2022 12:49:14	32	
06/02/2022	Commonwealth 's Motion to Enlarge with Certificate of Service - ALLOWED - any opposition to be filed on or before July 1, 2022 (Cosgrove, J.) dated 06/02/2022	33	Image
06/02/2022	Commonwealth 's Motion to Enlarge with Certificate of Service - ALLOWED - any opposition to be filed on or before July 1, 2022 (Cosgrove, J.) dated 06/02/2022	34	Image
07/01/2022	Opposition to motion #30 filed by Norfolk County District Attorney	35	Image
09/01/2022	Endorsement on Renewed Motion for Return of Property, (#30.0): DENIED Prescinding from any question as to the timeliness of the motion, it is denied for substantially the reasons set forth in the Commonwealth's Memorandum of Opposition. Cosgrove, J. (Notice sent).		
09/06/2022	Notice of appeal filed - denial of his renewed motion for return of property. (rec'd 9/1/22). Applies To: James, Joseph W (Defendant)	36	Image
09/20/2022	Notice of assembly of record sent to Counsel	37	Image
09/20/2022	Notice to Clerk of the Appeals Court of Assembly of Record	38	Image
09/20/2022	Appeal: Statement of the Case on Appeal (Cover Sheet).	39	Image
09/23/2022	Appeal entered in Appeals Court on 09/21/2022 docket number 2022-P-0916 (rec'd 9/22/2022)	40	Image
09/30/2022	Notice of docket entry received from Appeals Court "Please take note that on September 28, 2022, the following entry was made on the docket of the above-referenced case: The appeals 2021-P-1038, 2022-P-0916 and 2022-P-0917 are consolidated for briefing and decision. 2021-P-1038 and 2022-P-0916 is closed. All papers shall be transferred to 2022-P-0917. All future filings shall refer only to 2022-P-0917. Appellant's brief and appendix in the consolidated appeal is due on or before 10/31/2022. Notice/attest" (rec'd 9/28/2022)	41	Image
10/12/2022	Notice of docket entry received from Appeals Court "RE: No. 2022-P-0917 Please take note that, with respect to the Motion of Appellant to extend date for filing brief and	42	Image

1882CR00051 Commonwealth vs. James, Joseph W

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 02/20/2018
- DCM Track:
- B - Complex
- Initiating Action:
- CHILD PORNOGRAPHY, POSSESS c272 §29C
- Status Date:
- 03/06/2018
- Case Judge:
-
- Next Event:
-

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

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
02/20/2018	Case assigned to: DCM Track B - Complex was added on 02/20/2018		
02/20/2018	Indictment(s) returned	1	Image
02/23/2018	Attorney appearance On this date Melissa Rose Fournier, Esq. added for Defendant Joseph W James		
02/23/2018	Habeas Corpus for defendant issued to Norfolk County Correctional Center returnable for 03/06/2018 02:00 PM Arraignment.	2	
02/28/2018	ORDER: Commonwealth's Motion For Protective Order Regarding Grand Jury Exhibits 5,6 and 12 - SO ORDERED: Cannone, J. (dated 2/23/18) copies sent to ada & attorney Judge: Cannone, Hon. Beverly J	3	Image
03/06/2018	Event Result: Judge: Wilson, Hon. Paul D The following event: Arraignment scheduled for 03/06/2018 02:00 PM has been resulted as follows: Result: Held as Scheduled		
03/06/2018	Defendant arraigned before Court. Judge: Wilson, Hon. Paul D		
03/06/2018	Defendant waives reading of indictment Judge: Wilson, Hon. Paul D		
03/06/2018	Plea of not guilty entered on all charges. Judge: Wilson, Hon. Paul D		
03/06/2018	Bail set at \$0.00 Surety, \$5,000.00 Cash. Stay away from alleged victim Judge: Wilson, Hon. Paul D Applies To: James, Joseph W (Defendant)		
03/06/2018	Bail warnings read Judge: Wilson, Hon. Paul D		
03/06/2018	Defendant is ordered committed in lieu of having posted bail. Judge: Wilson, Hon. Paul D		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/06/2018	Issued on this date: Mittimus in Lieu of Bail Sent On: 03/06/2018 14:29:47	4	
03/08/2018	Habeas Corpus for defendant issued to Norfolk County Correctional Center returnable for 04/11/2018 02:00 PM Lobby Conference. Applies To: James, Joseph W (Defendant); Norfolk County Correctional Center (Holding Institution)	5	
03/08/2018	Commonwealth 's Statement of The Case	6	
03/08/2018	Commonwealth 's Notice of Discovery	7	
04/11/2018	Event Result: Judge: Connors, Hon. Thomas A The following event: Lobby Conference scheduled for 04/11/2018 02:00 PM has been resulted as follows: Result: Held as Scheduled		
04/11/2018	Offense Disposition:: Charge #1 CHILD PORNOGRAPHY, POSSESS c272 §29C On: 04/11/2018 Judge: Hon. Thomas A Connors By: Hearing on Plea Offer/Change Guilty Plea		
04/11/2018	Event Result: Judge: Connors, Hon. Thomas A The following event: Hearing for Change of Plea scheduled for 04/11/2018 03:30 PM has been resulted as follows: Result: Held as scheduled		
04/11/2018	Defendant waives rights. Judge: Connors, Hon. Thomas A	8	
04/11/2018	Plea colloquy given. Judge: Connors, Hon. Thomas A		
04/11/2018	Defendant warned pursuant to alien status, G.L. c. 278, § 29D. Judge: Connors, Hon. Thomas A		
04/11/2018	DNA fee WAIVED Judge: Connors, Hon. Thomas A		
04/11/2018	Defendant sentenced:: Revision Date: 04/11/2018 Judge: Hon. Thomas A Connors Charge #: 1 CHILD PORNOGRAPHY, POSSESS c272 §29C State Prison Sentence Not Less Than: 5 Years, 0 Months, 0 Days Not More Than: 5 Years, 0 Months, 1 Days Served Concurrently Charge # 1 Case 1782CR00194 Attest: B. Roche, a.c. FTR Committed to MCI - Cedar Junction (at Walpole) Credits 377 Days		
08/29/2018	Habeas Corpus for defendant issued to MCI - Gardner returnable for 09/05/2018 02:00 PM Motion Hearing.	9	
09/04/2018	Defendant 's Motion for Return of Property-Filed on 8/31/18 Applies To: Fournier, Esq., Melissa Rose (Attorney) on behalf of James, Joseph W (Defendant)	10	
09/04/2018	Affidavit filed by Defendant Joseph W James in support of Motion for Return of Defendant's Property-Filed on 8/31/18 Applies To: Fournier, Esq., Melissa Rose (Attorney) on behalf of James, Joseph W (Defendant)	11	
09/04/2018	Defendant 's Motion to Stay Data Erasure or Destruction of Kingston Hyperx Hard Disk Drive-Filed on 8/31/18 Applies To: Fournier, Esq., Melissa Rose (Attorney) on behalf of James, Joseph W (Defendant)	12	
09/05/2018	Event Result:: Motion Hearing scheduled on: 09/05/2018 02:00 PM Has been: Rescheduled For the following reason: Defendant not transported to event Hon. Robert C Cosgrove, Presiding		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Appeared: Staff:		
09/05/2018	Habeas Corpus for defendant issued to North Central Correctional Center returnable for 09/19/2018 02:00 PM Motion Hearing.	13	
09/17/2018	Commonwealth 's Motion for leave to destroy and dispose of certain computer equipment, digital media, and contraband seized from Defendant via search warrant - filed 9/17/2018	14	
09/17/2018	Commonwealth 's Motion for leave to destroy and dispose of certain digital media and contraband obtained by consent of minor victim's parents - filed 9/17/2018	15	
09/19/2018	Event Result:: Motion Hearing scheduled on: 09/19/2018 02:00 PM Has been: Held as Scheduled Comments: ADA McGee with ADA Murphy for the Commonwealth. Defendant present. FTR Rm 1- L Everett. Hon. Robert C Cosgrove, Presiding Appeared: Prosecutor Norfolk County District Attorney Erin Murphy, Esq., Defendant Joseph W James Melissa Rose Fournier, Esq., Staff:		
10/03/2018	Norfolk County District Attorney's Memorandum in opposition to Defendant's Motion to Stay Data Erasure of Destruction of Kingston Hyperx Hard Disk Drive	16	
10/10/2018	Endorsement on Commonwealth's Motion for leave to destroy and dispose of certain computer equipment, digital media and contraband seized from defendant via search warrant-NO ACTION on written Motion at this time, by Judge Cosgrove on 10/3/18. Copies sent to ADA and Defense, (#14.0): No Action Taken Judge: Cosgrove, Hon. Robert C		Image
10/10/2018	Endorsement on Commonwealth's Opposition to defendant's motion to stay data erasure or destruction of Kingston hyperx hard disk drive-The motion to retain possession of the Kingston Hyperx Hard Drive for the period specified is herein is ALLOWED, the motion to then destroy it is DENIED without prejudice. Judge Cosgrove on 10/3/18. Copies to Ada and Defense, (#16.0): ALLOWED, DENIED Judge: Cosgrove, Hon. Robert C		Image
10/10/2018	Endorsement on Defendant's Motion to stay Data Erasure Or Destruction of Kingston Hyperx Hard Disk Drive-After Hearing the motion is ALLOWED with respect to the stay. The request for a list is ALLOWED to the extent such list already exists; to the extent it does not, the Commonwealth is not required to create it. Judge Cosgrove on 10/3/18. Copies sent to Ada and Defense, (#12.0): ALLOWED Judge: Cosgrove, Hon. Robert C		Image
10/10/2018	Endorsement on Motion for return of Property-After Hearing, with respect to #1,2(a), 4, 5,6,7,8, the motion is Agreed to and ALLOWED. It is otherwise Denied. Judge Cosgrove, on 10/3/18, (#10.0): ALLOWED, DENIED Judge: Cosgrove, Hon. Robert C		Image
10/10/2018	Endorsement on Commonwealth's Motion for leave to Destroy and Dispose of Certain Digital Media and Contraband obtained by consent of Minor Victim's Parents-ALLOWED by Judge Cosgrove on 10/3/18, (#15.0): ALLOWED Judge: Cosgrove, Hon. Robert C		Image
11/05/2018	Defendant 's Notice of Appeal-Filed on 11/2/18	17	
11/09/2018	Attorney appearance On this date Rebecca Ann Jacobstein, Esq. added for Defendant Joseph W James		
11/20/2018	Court Reporter Attorney to order Transcript from OTS. is hereby notified to prepare one copy of the transcript of the evidence of 09/19/2018 02:00 PM Motion Hearing	18	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/06/2018	ORDER: re: return of personal property Judge: Cosgrove, Hon. Robert C	19	Image
11/17/2021	Notice to Clerk of the Appeals Court of Assembly of Record	20	
11/17/2021	Notice of assembly of record sent to Counsel	21	
11/17/2021	Appeal: Statement of the Case on Appeal (Cover Sheet).	22	
11/17/2021	Docket Note: Sent letter by mail and most recent sent email to attorney inquiring about appeal. No response by attorney. I have processed the appeal on the papers as of 11/17/2021.		
11/17/2021	Docket Note: Appeal sent to appeals court electronically on 11/17/2021		
02/15/2022	Attorney appearance On this date Patrick Levin, Esq. added for Defendant Joseph W James		Image
04/21/2022	Defendant 's Motion (RENEWED) for Return of Property with Certificate of Service	23	Image
04/21/2022	Affidavit of Defendant	24	Image
04/21/2022	Joseph W James's Memorandum in support of Renewed Motion for Return of Property	25	Image
05/05/2022	Notice of docket entry received from Appeals Court RE:2021-P-1038 Please take note that, with respect to the MOTION of Appellant to stay appellate proceedings filed for Joseph W. James by Attorney Patrick Levin. (Paper #8), on March 1, 2022, the following order was entered on the docket: RE:#8 ALLOWED. Appellate proceedings stayed to 3/28/22. The defendant is given leave to file and the trial court to consider a renewed motion for return of property. Status report due 3/28/22 regarding possible resolution of this matter and /or whether the renewed motion for return of property has been filed in the trial court. Notice/attest/Cosgrove, J Dated March 1, 2022	26	Image
05/05/2022	Notice of docket entry received from Appeals Court RE: 2021-P-1038 Please take note that, with respect to the Status Report filed for Joseph W. James by Attorney Patrick Levin. (Paper #10), on April 29,2022, the following entry was made on the docket of the above-referenced case: RE#10: Appellate proceedings stayed to 6/1/22. Status report due then concerning trial court's disposition of pending motion for return of property. Notice/attest	27	Image
06/27/2022	Notice of docket entry received from Appeals Court RE:2021-P-1038 Please take note that, with respect to the Status Report filed for Joseph W. James by Attorney Patrick Levin. (Paper #12), on May 31, 2022, the following order was entered on the docket: RE:12: Appellate proceedings stayed to 7/1/22. Status report due then concerning trial court's disposition of pending motion for return of property. *Notice/Attest.	28	Image
07/01/2022	Opposition to Commonwealth's opposition to defendant's renewed motion for return of property-Filed on 7/1/2022-Motion #25 filed by Norfolk County District Attorney Copy sent via email to Cosgrove, J. 7/6/2022	29	Image
07/20/2022	Notice of docket entry received from Appeals Court RE: 2021-P-1038 Please take note that, with respect to the Status Report filed for Joseph W. James by Attorney Patrick Levin. (Paper #13), on July 5, 2022, the following entry was made on the docket of the above-referenced case:	30	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	RE#13: Appellate proceedings stayed to 9/1/22. Status report due then concerning trial court's disposition of pending motion for return of property. *Notice/attest (rec'd 7/5/22)		
09/01/2022	Endorsement on Renewed Motion for Return of Property, (#23.0): DENIED Prescinding from any question as to the timeliness of the motion, it is denied for substantially the reasons set forth in the Commonwealth's Memorandum of Opposition. Cosgrove, J. (Notice sent). Judge: Cosgrove, Hon. Robert C		
09/06/2022	Notice of appeal filed - denial of his renewed motion for return of property. (rec'd 9/1/22) Applies To: James, Joseph W (Defendant)	31	Image
09/14/2022	Notice of docket entry received from Appeals Court RE: No. 2021-P-1038 Please take note that, with respect to the Status Report filed for Joseph W. James by Attorney Patrick Levin. (Paper #14), on September 1, 2022, the following entry was made on the docket of the above-referenced case: RE#14: The trial court is to forthwith assemble and transmit the defendant's appeal from his renewed motion for return of property. Appellate proceedings stayed to 10/3/22. Status report due then or within 7 days of entry of the new appeal, whichever occurs first. The defendant should anticipate that the stay of appellate proceedings will be vacated upon the entry of the new appeal, the appeals will be consolidated, and a briefing schedule will be set. *Notice/attest (rec'd 9/1/22)	32	Image
09/20/2022	Notice of assembly of record sent to Counsel	33	Image
09/20/2022	Notice to Clerk of the Appeals Court of Assembly of Record	34	Image
09/20/2022	Appeal: Statement of the Case on Appeal (Cover Sheet).	35	Image
09/23/2022	Appeal entered in Appeals Court on 09/21/2022 docket number 2022-P-0917 (rec'd 9/22/2022)	36	Image
09/30/2022	Notice of docket entry received from Appeals Court "RE: No. 2021-P-1038 Please take note that on September 28, 2022, the following entry was made on the docket of the above-referenced case: The appeals 2021-P-1038, 2022-P-0916 and 2022-P-0917 are consolidated for briefing and decision. 2021-P-1038 and 2022-P-0916 is closed. All papers shall be transferred to 2022-P-0917. All future filings shall refer only to 2022-P-0917. Appellant's brief and appendix in the consolidated appeal is due on or before 10/31/2022. Notice/attest" (rec'd 9/28/2022)	37	Image
09/30/2022	Notice of docket entry received from Appeals Court "RE: No. 2022-P-0917 Please take note that on September 28, 2022, the following entry was made on the docket of the above-referenced case: The appeals 2021-P-1038, 2022-P-0916 and 2022-P-0917 are consolidated for briefing and decision. 2021-P-1038 and 2022-P-0916 is closed. All papers shall be transferred to 2022-P-0917. All future filings shall refer only to 2022-P-0917. Appellant's brief and appendix in the consolidated appeal is due on or before 10/31/2022. Notice/attest" (rec'd 9/28/2022)	38	Image
10/12/2022	Notice of docket entry received from Appeals Court "RE: No. 2022-P-0917 Please take note that, with respect to the Motion of Appellant to extend date for filing brief and appendix filed for Joseph W. James by Attorney Patrick Levin. (Paper #7), on October 3, 2022, the following entry was made on the docket of the above-referenced case: RE#7: Allowed to 01/31/2023. Notice sent." (rec'd 10/3/2022)	39	Image

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT DEPT.
1882CR00051

COMMONWEALTH

v.

JOSEPH JAMES

ORDER

After consideration of the defendant's Motion for Return of Property, it is hereby
ORDERED that the Commonwealth and its agents release and return the following property
seized from the defendant on March 6, 2017:

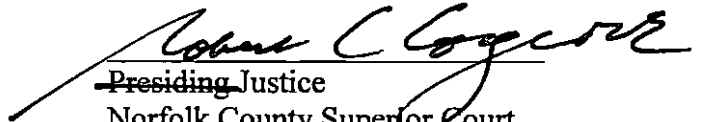
1. ASUS MSI 970 Gaming Computer Tower (with hard drives removed)
Property #17-262-PR
2. Toshiba Hard Drive (Model #MK7559GSXF) 750 GB SATA HDD, s/n 337ZCXFDT
Seized from within the MSI 970 Gaming Computer Tower – Property #17-262-PR
3. Logitech Video Camera
Property #17-269-PR
4. APC Computer Battery and Power Chord
Property #17-265-PR
5. Bag of Power Chords
Property #17-263-PR
6. Computer Mouse and Speakers
Property #17-269-PR

and/or the Massachusetts State Police

Upon receipt of this order, the Weymouth Police Department shall release the property listed

above to Mr. James or his authorized agent:

Ms. Deborah Nazzaro
180 Schoosett Street, Apt B23
Pembroke, MA 02359
DOB: 01/06/1960


~~Presiding Justice~~
Norfolk County Superior Court

Dated: 12/5/18

Certificate of Compliance

I hereby certify that this application complies with rules 11 and 20 of the Massachusetts Rules of Appellate Procedure. The application is set in 14-point Athelas and the argument section contains 1,947 words, as determined through use of the “Word Count” feature in Microsoft Word for Office 365.

/s/ Patrick Levin

Patrick Levin

Certificate of Service

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

Michael McGee
Norfolk County DA’s Office
45 Shawmut Road
Canton, MA 02021
(781) 830-4956
micah.p.mcgee@state.ma.us

/s/ Patrick Levin

Patrick Levin, BBO #682927
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Public Defender Division
75 Federal Street, Sixth Floor
Boston, Massachusetts 02110
(617) 482-6212
plevin@publiccounsel.net

November 17, 2022