

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Hampden, ss.

DAR _____
NO. 2022-P-0331

COMMONWEALTH

V.

KIESON S. CUFFEE

On Appeal from Hampden Superior Court

Defendant's Application for Direct Appellate Review

Date: June 23, 2022

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**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

HAMPDEN, ss.

DAR _____
NO. 2022-P-0331

COMMONWEALTH

V.

KEISON S. CUFFEE

APPLICATION FOR DIRECT APPELLATE REVIEW

REQUEST FOR DIRECT APPELLATE REVIEW

Pursuant to Mass. R. App. P. Rule 11, Kieson S. Cuffee applies for leave to obtain direct appellate review.

STATEMENT OF PRIOR PROCEEDINGS

On January 17, 2019, Kieson Cuffee was indicted by a Hampden Superior Court grand jury on eight charges: (1) Possession of a Firearm as an Armed Career Criminal with two qualifying offenses and as a subsequent offender G. L. c.

269, §§ 10(a), 10(d), 10G(b); (2) Assault with a Dangerous Weapon, in violation of G.L. c. 265, § 15B(b); (3) Assault with a Dangerous Weapon, in violation of G.L. c. 265, § 15B(b); (4) Assault and Battery, in violation of G.L. c. 265, § 13A; (5) Resisting Arrest, in violation of G.L. c. 268, § 32B; (6) Assault and Battery, in violation of G.L. c. 265, § 13A; (7) Armed Assault with Intent to Rob, in violation of G.L. c. 265, § 18(b); and (8) Assault with a Dangerous Weapon, in violation of G.L. c. 265, § 15B(b).

On March 2, 2020, the defense filed a Motion to Suppress Evidence Recovered as the Result of a Warrantless Stop; and on January 12, 2021, filed a Rule 14(a)(2) motion for discovery under the Equal Protection doctrine articulated in *Commonwealth v. Long*. The defendant requested that the Commonwealth provide police reports from the previous year where the arresting officers are listed as either the Reporting Officer or the Assisting Officer and their Field Interview Reports from the same time.

On January 13, 2021, the Honorable Jane E. Mulqueen held a hearing on the discovery motion. The Commonwealth orally stated its opposition. Judge Mulqueen denied the motion on February 8, 2021 and wrote that “*Commonwealth v. Long* does not apply to the stop at issue in this case and if it were applicable, the defendant has not met the relevant standard under Mass. R. Crim. P. 14 for the requested documents on this set of facts.” On February 16, 2021, the defense filed a Notice of Interlocutory Appeal. On March 1, 2021, the Commonwealth filed a memorandum in opposition. Eight days later, the Court (Lowy, J.) denied the defendant’s petition without a hearing or issuing a written opinion (SJ-2021-0063). The defense withdrew the Motion to Suppress in open court on February 22, 2021.

A six-day jury trial began on June 23, 2021 with the Honorable Francis E. Flannery presiding. The Commonwealth presented eleven witnesses; the defense presented one. Both sides relied upon surveillance videos from inside a bodega. The area where the police stopped Mr.

Kieson Cuffee (Cuffee) was not covered by surveillance cameras and there was no video of the police locating the gun. The forensic video analyst could have requested the footage of the gun being located, which occurred prior to his arrival, but he did not.

On June 30, 2021, the jury returned a guilty verdict on the first indictment charging Cuffee with Possession of a Firearm as an Armed Career Criminal with two qualifying offenses. The jury found him not guilty on indictments 2-5. The Commonwealth entered *nolle prosequi* on indictments 6-8. In exchange for amending the subsequent offender portion to one qualifying offense, Cuffee entered a plea during the bi-furcated portion of the trial. On July 28, 2021, Cuffee was sentenced to no less than 8 years and no more than 10 years in state prison.

On August 19, 2021, the defendant filed a Notice of Appeal. The record was assembled and docketed in the Appeals Court on April 11, 2022. A request for an extension was granted and the brief is due on August 22, 2022.

STATEMENT OF THE FACTS

On November 8, 2018, shortly before 1:30 pm, there was a report of ShotSpotter activity at 57 Grand Street in Springfield, MA. Homicide detectives Longo and Podgurski were in the area and responded to the dispatch. Longo and Podgurski were wearing plain clothes and driving an unmarked vehicle. No description of a possible suspect had been broadcast at that time.

Longo testified that when they were about a block from Grand Street, he noticed a Black man, Kieson Cuffee, running on the sidewalk. There was no testimony that either officer knew Cuffee from a previous interaction. Longo described him as having an “unnatural gait” and he appeared to be supporting a weighted object on his right side. They suspected it was a firearm. There was no testimony about whether the unnatural gait was due to running in low-riding pants. Longo indicated that Cuffee looked at them, stopped running, pulled his hood up, and entered a bodega. The officers, who were driving in the

opposite direction, made a three-point turn and parked across the street from the bodega. They followed Cuffee into the store.

As the surveillance video showed, Cuffee walked down the aisles and he adjusted his low riding pants. Cuffee was standing in the back at the coolers--a location that was not visible on the surveillance cameras. Once inside, the detectives spread out to corner Cuffee from both sides. Cuffee turned and walked toward Longo. Longo initiated the stop; he said, "hey, man, police. Show me your hands." As the prosecutor explained, Longo and Podgurski were "out of their car and in the store for approximate twelve seconds before they effect the stop of Mr. Cuffee...The entire interaction inside the store [took] about twenty-one seconds."

Longo testified that Cuffee turned away, towards his right side, which made Longo fearful that he was reaching for a gun. Longo grabbed Cuffee by the arm, and they struggled. During this scuffle, Longo believed that he saw a gun in Cuffee's waistband and called a warning to

Podgurski. Then, Longo threw Cuffee, straight forward, into a metal rack. Podgurski testified that the metal rack “just sliced him right open” and Cuffee “was bleeding every -- he had blood everywhere.” After smashing into the rack, Cuffee ran out of the store. The officers did not see a gun in his hand.

The detectives pursued Cuffee as he ran through the neighborhood. Cuffee was apprehended near a house, behind a gas station. After putting him in handcuffs¹, they conducted a pat frisk and did not find a weapon. Officers secured the bodega and found a gun on a shelf. They also recovered Cuffee’s cell phone and sweatshirt but did not process the sweatshirt for gun residue or apply for a search warrant for the phone. Both pieces of evidence were erroneously destroyed prior to the trial. The gun however

¹ Cuffee was bleeding profusely and needed medical attention after his arrest. While he was being treated, he jumped down from the ambulance and ran into an EMT who was standing nearby. This was the basis for indictments four and five. Because the jury found him not guilty of those charges, they are not part of the appeal and have not been included in the statement of facts.

was processed for fingerprints—none were found. A firearm examiner test fired the gun and inspected the ammunition.

STATEMENT OF THE ISSUE

Whether the motion judge erroneously concluded that the discovery requested under the Equal Protection clauses in articles 1 and 10, as articulated in *Commonwealth v. Long*, did not apply to a pedestrian stop and failed to recognize the relevance of the discovery to the warrantless stop of an African American man?

THE ISSUE WAS RAISED AND PROPERLY PRESERVED IN THE LOWER COURT

The defendant properly preserved the constitutional objection in the lower court by filing an appeal through a petition for review under G.L. c. 211, § 3, which was denied.

ARGUMENT

Limiting *Long* to traffic stops ignores the parallel legal frameworks of traffic and pedestrian stops. Additionally, the Equal Protection clauses in articles 1 and 10 of the Massachusetts Declaration of Rights safeguard individuals

when race is a motivation in the government's decision to suspect, investigate, or stop them. To hold otherwise is to carve out exceptions that allow inequality to fester unchecked.

First, there is no reason to believe that a pedestrian stop should be evaluated differently than a traffic stop under articles 1 and 10 since they share the broad constitutional framework for evaluating suppression issues under art. 14. Both traffic and pedestrian stops represent intrusions into constitutionally protected spaces—only acceptable through recognized exceptions. *Commonwealth v. Trumble*, 396 Mass. 81, 86 (1985). While the full Court maintains that the Equal Protection clause is the appropriate mechanism to challenge selective enforcement, there is a compelling concurrence in *Long* that a stop based upon pretext would per se be unreasonable under art. 14. “[T]he ability to challenge alleged race-based stops on both equal protection and art. 14 grounds would enhance the ability of people of color to pursue an effective remedy against discrimination.”

Long, 485 Mass. at 738 (Budd, J. concurring). Stops of pedestrians and drivers should be treated the same under articles 1, 10 and 14.

Nevertheless, the overriding factor for a selective enforcement claim is the motivation underlying an officer's decision to focus on a particular person, not the specific location of the person. An Equal Protection violation occurs when race is a motivation in the decision to suspect an individual, to investigate them, or to stop them. The Supreme Judicial Court acknowledged the difficulty in proving that race is a motivation and hoped that the holding in *Lora* would "make it easier for defendants to establish racial discrimination by allowing them to raise a reasonable inference of racial profiling based on an officer's conduct in other traffic stops." *Commonwealth v. Long*, 485 Mass 711, 720 (2020); see also *Commonwealth v. Buckley*, 478 Mass. 861, 871 (2018) ("encouraging" defendants to seek discovery, develop, and present to the Court statistical evidence of racial discrimination in criminal proceedings).

The overriding issue in *Long* was the investigative decision by police to target a person due to his race. That Mr. Long was driving a car only constituted the circumstances under which the stop was conducted. The legal and practical reasoning of the Equal Protection framework applies well beyond traffic stops. “[T]his right to discovery applies equally to all claims of racially motivated stops.” *Long*, 485 Mass. at 726. The Court affirmatively explained that the adjusted Equal Protection framework encompasses decisions made by the police about who they investigate whenever those decisions are motivated by race, whether they were traffic related or not. As the Court stated, “A systemic solution requires more than an improved test for identifying individual instances of bias when they come before courts. It requires a reevaluation of the rules that enable and incentivize officers to make pretextual race-based stops in the first place.” *Long*, 458 Mass. at 756 (Budd, J., concurring).

Cuffee sought discovery to analyze the potential motivation that race had in his case, and it met the requirement of relevance. *Long*, 485 Mass. at 725–26. Cuffee made the request for patterns in enforcement actions by the police officers in the form of statistical data because it is “not as susceptible to being explained away with race-neutral justifications and therefore will. . . . continue to have ‘unique advantages’ over other types of evidence.” *Long*, 458 Mass. at 752 (Budd, J., concurring). Cuffee wanted to use “the patterns in enforcement actions” to compare to the totality of the circumstances in his case. *Long*, 458 Mass. at 724. As the *Long* Court explained, the following factors would be relevant for a claim of selective enforcement: “(2) the regular duties of the officer involved in the stop; (3) the sequence of events prior to the stop; (4) the manner of the stop; (5) the safety interests in enforcing the motor vehicle violation and (6) the specific police department's policies and procedures”. *Long*, 458 Mass. at 724-725 and FN 7-12. These all favor allowing discovery in Cuffee’s circumstances.

Regular duties of the officer involved in the stop: Longo and Podgurski are in the Homicide Unit. They are not crime prevention patrol, but usually arrive after a crime has been committed. It would be helpful in discovery to see how their previous investigative decisions conformed or deviated from their conduct with Cuffee.

Sequence of events prior to the stop: Just like the “proximity [of a reported crime] alone is not enough to provide the police with reasonable suspicion for a stop” *Commonwealth v. D.M.*, 100 Mass. App. Ct. 211, 219, (2021), Cuffee’s location--a few blocks away from a ShotSpotter notice--would be weighed as part of the totality of the circumstances. As the defense pointed out, it would be reasonable for someone to run away from an area where shots had been fired. The ShotSpotter notification provided a geographic location but that is all. *Commonwealth v. Ford*, 100 Mass. App. Ct. 712, 717 (2022).

More importantly, when Longo and Podgurski followed Cuffee, they did not have a description of the shooter. *See*

Commonwealth v. Meneus, 476 Mass. 231, 236–37 (2017) (“a general description such as ‘a group of young black males’ falls far short of the particularity necessary to establish individualized suspicion that a suspect is committing, has committed, or is about to commit a crime”). It was the middle of the day on a fall afternoon. The surveillance video from the bodega showed people coming in and out of the store. But the person who caught the attention of police was a Black man. These officers did not know Cuffee prior to making the decision to follow him into the bodega. They did not know his name, whether he had a prior arrest history, or any gang affiliation. Officers did not know where he lived or worked. Not having any idea where exactly he was coming from or how long he had been running, it was irrelevant that Cuffee stopped running after Longo and Podgurski passed him in their unmarked cruiser.

Additionally, “[c]arrying a concealed firearm, by itself, is not a crime”. *D.M.*, 100 Mass. App. Ct. at 218 citing *Commonwealth v. Matta*, 483 Mass. 357, 366 (2019). Longo

and Podgurski testified that Cuffee had an unusual gait, indicative of carrying a weapon. But there was no testimony about whether Cuffee's unusual gait reflected the cumbersome process of running in low riding pants.

In sum, prior to the stop, the officers were driving to a location where there had been a report of shots fired. They did not have a description of who was involved. They saw a Black man, who they did not know, running on the sidewalk away from the direction of the shots fired. They testified that the way he was holding his hand to his side was suspicious. This was all the information they had before they turned their car around and followed him into the bodega.

Manner of the stop: The detectives went into the bodega, cornered Mr. Cuffee and blocked his passage down the aisle. As the Commonwealth explained, Longo and Podgurski were "out of their car and in the store for approximate twelve seconds before they effect the stop of Mr. Cuffee...The entire interaction inside the store takes about twenty-one seconds." Longo ordered Cuffee to show his

hands moments before Longo put his own hands on Cuffee. The manner of the stop was so fast and so violent that there is an indication that implicit bias played a role in the escalation. *See Commonwealth v. Sweeting-Bailey*, 488 Mass. 741, 770 (2021)(Budd, C.J. dissenting)(“Creating greater space for officers to act on their ungrounded intuitions that people are dangerous increases the risk [to] people of color.”).

Safety interests: The Commonwealth’s opposition to the G.L. c. 211, § 3 petition argued that the Equal Protection clause does not apply because the officers had reasonable suspicion to stop Cuffee—essentially that the “safety interests” in the totality of the circumstances calculus automatically renders an Equal Protection claim moot. This is mistaken for two reasons.

First, it puts the cart before the horse. The public safety issue goes to the weight of the factors—not as a barrier to discovery. *See Long*, 485 Mass. 725 FN. 11 (2020). At the discovery stage, Cuffee only needed to raise a reasonable inference of racial profiling, meaning “evidence

upon which a reasonable person could rely to infer that the officer discriminated based on the defendant's race or membership in another protected class. Conclusive evidence is not needed." *Long*, 485 Mass. at 723–24.

Secondly, the reasonable suspicion analysis is fact-specific and cannot be evaluated before all the facts are determined. Amongst numerous factors, courts consider the behaviors of the defendant, actions of the police officers, and the events leading up to the stop. Cuffee's discovery request was necessary to evaluate all the relevant circumstances that contributed to the decision to stop him—including whether his race was a contributing factor.² It is widely acknowledged that stereotypes and unconscious biases influence us all. *Buckley*, 478 Mass. at 878 (Budd, J., concurring) ("[E]ven people who do not believe themselves to harbor implicit bias may in fact act in ways that disfavor

² Geoffrey P. Alpert et al., Police Suspicion and Discretionary Decision-Making During Citizen Stops, 43 *Criminology* 407, 426 (2005) (concluding that race predicts how officers form suspicions, but not how they make arrest decisions)

people of color.”). Empirical evidence demonstrates that widespread implicit bias combined with broad police discretion creates racial disparities.³ “[S]tatistics provide potentially the strongest tool to demonstrate that bias, particularly where it is implicit.” *Long*, 485 Mass. at 731.

Specific police department's policies and procedures: It is well established that the Springfield Police Department (SPD) has serious problems in the area of racial profiling. The SPD also has a well-documented problem with excessive force, exacerbated by the lack of accountability from the Internal Investigations Unit. The United States Department of Justice released report in 2020 detailing an investigation of SPD abuses.⁴ In the report, one officer said that people know that if you mess with the SPD or try to run, you “get a beat down.” *Id.* at 13. At the time of the discovery, Cuffee

³ *Racial Bias and Disparities in Proactive Policing*, in *Proactive Policing: Effects on Crime and Communities* 251, 275–86 (David Weisburd & Malay K. Majmundar eds., 2018), <https://www.nap.edu/read/24928/chapter/9#275> (collecting studies).

⁴ Available at <https://www.justice.gov/opa/press-release/file/1292901/download>

was facing numerous indictments based upon the physical altercation he had with Longo, after Longo threw him face-first into a metal rack. The discovery request was based upon the documented problems at the SPD. The institutionalized policies and procedures enabled numerous abuses, whether in the form of excessive force or selective enforcement.

This examination of the totality of the circumstances provides a feasible argument that race, explicitly or implicitly, may have been a motivating factor for Longo and Podgurski's behavior. But to support the argument, Cuffee needed to compare the data to other stops. A selective enforcement argument needs comparisons. *See Commonwealth v. Franklin*, 376 Mass. 885, 897 (1978) (information about police involvement and responses to individuals of different races relevant to a selective prosecution claim). Cuffee should have been allowed to explore the issue with relevant discovery--not muzzled by the motion judge's erroneous legal conclusion. As a result of

the constitutional error, Cuffee was not able to develop a viable defense through a Motion to Suppress the evidence seized in the warrantless search.

This error was not harmless beyond a reasonable doubt because it prevented the Commonwealth from bearing the burden of rebutting that inference. *Long*, 485 Mass. at 726. The Commonwealth never had to prove that the stop was not racially motivated. “The prohibition against racial profiling must be given teeth”, *Long*, 485 Mass. at 736 (Gants, C.J., concurring), not turned into a paper tiger.

REASONS FOR DIRECT APPELLATE REVIEW

There are two reasons why direct appellate review is appropriate. First, this is a question of law concerning the Constitution of the Commonwealth. Second, it has substantial public interest.

This case presents an issue of whether the Equal Protection clauses of articles 1 and 10 apply to selective enforcement beyond traffic stops. Fundamentally, the idea

that a constitutional protection could be limited to just traffic stops runs contrary to the founding principles of the Commonwealth, especially when automobiles were invented over one hundred years after the signing of the Massachusetts Declaration of Rights. Additionally, an argument that limits the reach of the Equal Protection clause reinforces the grip of systemic racism because it allows the motivations of law enforcement to remain unchecked. Explicit and implicit bias will continue unless challenged in substantive ways-- “implicit biases are real, pervasive, and difficult to change.” *Commonwealth v. McCowen*, 458 Mass. 461, 499 (2010) (Ireland, J., concurring); *see also, e.g.*, Devon W. Carbado & L. Song Richardson, *The Black Police: Policing Our Own*, 131 Harv. L. Rev. 1979, 1994 (2018) (“[A]s a result of implicit racial biases, officers are more likely to focus their attention on black, rather than white, individuals. This is true even when the officers are consciously egalitarian, reject racial profiling, or are black themselves.”). As a gatekeeper, the motion judge

missed the chance to allow relevant discovery under Rule 14(a)(2). The defendant is not even making the argument as to how the judge could have evaluated the Motion to Suppress if he had access to the discovery. He needed the chance to gather the relevant evidence and present a complete picture to the judge. This Court is best situated to address this constitutional issue to make sure that all defendants who raise a valid claim of selective enforcement have the chance to gather the relevant discovery.

Just like people riding in vehicles and walking on the street should have access to the same type of discovery, people in the eastern and western parts of the state should have equal treatment. The public has an interest in a uniform standard for resolving these motions, which will also alleviate a strain on judicial resources. In contrast to the denial in Cuffee's case, Suffolk County judges have allowed over twenty similar motions in non-traffic related circumstances. [See page 43.] As a result, defense attorneys in Suffolk believe this is a settled area of law, citing

Commonwealth v. Dilworth, SJC-12764 (June 16, 2020)

while those in Hampden county do not.⁵.

CONCLUSION

For the foregoing reasons, this Court should grant Direct Appellate Review to establish that the constitutional protections in articles 1 and 10 apply equally across the Commonwealth to support discovery that is relevant to valid claims of selective prosecution.

Respectfully submitted,

KEISON S. CUFFEE

By his attorney,

/s/ Molly Ryan Strehorn

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Date: June 23, 2022

⁵ See *Commonwealth v. Dwayne Johnson*, Springfield District Court, Docket No. 2023CR6410, the defendant's Equal Protection discovery motion for a SnapChat investigation was denied. The motion judge wrote in the margins, "Comm. v. Long applies to selective traffic stops. Court find[s] it does not apply here."

- Case Type:
Indictment
- Case Status:
Open
- File Date
01/17/2019
- DCM Track:
A - Standard
- Initiating Action:
FIREARM VIOL WITH 1 PRIOR VIOLENT/DRUG CRIME c269 §10G(a)
- Status Date:
02/08/2019
- Case Judge:
Flannery, Hon. Francis E
- Next Event:

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

Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
01/17/2019	Indictment(s) returned	1	Image
01/25/2019	Attorney appearance On this date Maximilian J Bennett, Esq. added for Prosecutor Hampden County District Attorney		
02/08/2019	Attorney appearance On this date Katherine Murdock, Esq. added as Appointed - Indigent Defendant for Defendant Kieson S Cuffee Appointment made for the purpose of Case in Chief by Judge Brian Dolaher.		
02/08/2019	Case assigned to: DCM Track A - Standard was added on 02/08/2019		
02/08/2019	Event Result:: Arraignment scheduled on: 02/08/2019 09:01 AM Has been: Held as Scheduled Comments: FTR 1 Brian Dolaher, Presiding Appeared: Staff: Brian Dolaher, Assistant Clerk Magistrate Lauramarie Sirois, Assistant Clerk Magistrate		
02/08/2019	Defendant arraigned before Court. Judge: Dolaher, Brian		
02/08/2019	Defendant waives reading of indictment Judge: Dolaher, Brian		
02/08/2019	Plea of not guilty entered on all charges. Judge: Dolaher, Brian		
02/08/2019	Bail set at \$0.00 Surety, \$100,000.00 Cash. without prejudice; Next date: 3/18/20	2	
02/08/2019	Bail warnings read Judge: Dolaher, Brian		
05/09/2019	Event Result:: Pre-Trial Hearing scheduled on: 05/09/2019 09:19 AM Has been: Held as Scheduled Comments: ftr 1 Hon. Richard J Carey, Presiding Staff: Brian Dolaher, Assistant Clerk Magistrate Michael T Sarnacki, Esq., Assistant Clerk Magistrate		
05/09/2019	Pre-trial conference report filed	3	Image
05/09/2019	Attorney appearance On this date Katherine Murdock, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Kieson S Cuffee		
05/09/2019	Attorney appearance On this date George Joseph Welch, Esq. added as Appointed - Indigent Defendant for Defendant Kieson S Cuffee Appointment made for the purpose of Case in Chief by Judge Brian Dolaher.	4	Image
06/03/2019	Defendant 's Motion to dismiss Appointed Attorney and for Appointment of New Attorney	5	Image
06/18/2019	Event Result:: Hearing for Appearance / Appointment of Counsel scheduled on: 06/18/2019 09:03 AM Has been: Not Held For the following reason: Joint request of parties Comments: FTR-1 Hon. Richard J Carey, Presiding Staff: Brian Dolaher, Assistant Clerk Magistrate Michael T Sarnacki, Esq., Assistant Clerk Magistrate Lauramarie Sirois, Assistant Clerk Magistrate		
06/18/2019	Defendant 's Motion to withdraw	6	
06/18/2019	Affidavit filed by Defendant Kieson S Cuffee in support of motion to withdraw	6.1	Image
06/18/2019	Endorsement on Motion to withdraw, (#6.0): ALLOWED Judge: Carey, Hon. Richard J		Image
06/18/2019	Event Result:: Evidentiary Hearing on Suppression scheduled on: 06/18/2019 09:15 AM Has been: Not Held For the following reason: Request of Defendant Hon. Richard J Carey, Presiding Staff: Brian Dolaher, Assistant Clerk Magistrate Michael T Sarnacki, Esq., Assistant Clerk Magistrate Lauramarie Sirois, Assistant Clerk Magistrate		
06/18/2019	Attorney appearance On this date George Joseph Welch, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Kieson S Cuffee		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/02/2019	Event Result:: Hearing for Appearance / Appointment of Counsel scheduled on: 07/02/2019 09:03 AM Has been: Held as Scheduled Comments: FTR 1 Hon. Michael K Callan, Presiding Staff: Terrence C Ginley, Assistant Clerk Magistrate Lauramarie Sirois, Assistant Clerk Magistrate		
07/02/2019	Attorney appearance On this date Janet E Glenn, Esq. added as Appointed - Indigent Defendant for Defendant Kieson S Cuffee		
07/02/2019	Event Result:: Final Pre-Trial Conference scheduled on: 10/03/2019 09:39 AM Has been: Not Held For the following reason: Joint request of parties Unassigned, Presiding		
07/02/2019	Event Result:: Jury Trial scheduled on: 10/17/2019 09:07 AM Has been: Not Held For the following reason: Joint request of parties Unassigned, Presiding		
07/02/2019	Appointment made for the purpose of Case in Chief by Judge Hon. Michael K Callan.		
07/03/2019	Defendant 's Motion for funds for firearms expert	7	Image
07/03/2019	Affidavit of Janet E. Glenn in support of defendant's motion for funds	7.1	Image
07/03/2019	Defendant 's EX PARTE Motion for funds for investigator	8	Image
07/03/2019	Affidavit of Janes E. Glenn in support of defendant's motion for funds for investigator	8.1	Image
07/05/2019	Endorsement on Motion for funds for firearms expert., (#7.0): ALLOWED n Attys via mail and tin		Image
07/05/2019	Endorsement on Motion for funds for investigator., (#8.0): ALLOWED N Attys via mail and tin.		Image
07/25/2019	Defendant 's Motion for funds for crime scene investigator expert	9	Image
07/25/2019	Affidavit of Janet E. Glenn in support of defendant's motion for funds	9.1	
07/26/2019	Endorsement on Motion for funds for crime scene investigation expert, (#9.0): ALLOWED (n via mail)		Image
08/05/2019	Defendant 's Motion for discovery related to firearm	10	Image
08/05/2019	Defendant 's Motion for discovery	11	Image
08/05/2019	Affidavit of of counsel in support of defendants motion for discovery	11.1	Image
08/05/2019	Defendant 's Motion to permit independent testing and analysis of ballistic evidence including but not limited to the alleged firearms by defense expert	12	Image
08/05/2019	Affidavit of defense counsel in support of defendants motion for independent testing	12.1	Image
08/05/2019	Affidavit filed by Defendant Kieson S Cuffee in support of motion for discovery on firearms	10.1	
08/08/2019	Endorsement on Motion for discovery, (#11.0): ALLOWED by agreement compliance to the def. 9/30/19		Image
08/08/2019	Event Result:: Hearing RE: Discovery Motion(s) scheduled on: 08/08/2019 09:23 AM Has been: Held as Scheduled Comments: ftr 1 Hon. James G Reardon, Jr., Presiding Staff: Terrence C Ginley, Assistant Clerk Magistrate Michael T Sarnacki, Esq., Assistant Clerk Magistrate		
10/03/2019	Pre-trial conference report filed	13	Image
10/03/2019	Event Result:: Final Pre-Trial Conference scheduled on: 10/03/2019 09:39 AM Has been: Not Held For the following reason: Joint request of parties Comments: FTR 1 Hon. James G Reardon, Jr., Presiding Staff: Brian Dolaher, Assistant Clerk Magistrate Michael T Sarnacki, Esq., Assistant Clerk Magistrate Lauramarie Sirois, Assistant Clerk Magistrate		
10/03/2019	Event Result:: Jury Trial scheduled on: 10/17/2019 09:07 AM Has been: Not Held For the following reason: Joint request of parties Unassigned, Presiding		
02/14/2020	Defendant 's Motion for transfer to Hampshire County House of Correction	14	Image
02/14/2020	Affidavit of of Counsel in support of Motion for transfer to Hampshire house of correction	14.1	Image
02/18/2020	Endorsement on Motion to transfer to Hampshire County House of Correction, (#14.0): No Action Taken at this time. TO be re-marked for further hearing. Judge: Callan, Hon. Michael K		Image
02/18/2020	Event Result:: Motion Hearing scheduled on: 02/18/2020 09:23 AM Has been: Not Held For the following reason: Joint request of parties Comments: ftr1 Hon. Michael K Callan, Presiding Staff: Terrence C Ginley, Assistant Clerk Magistrate Michael T Sarnacki, Esq., Assistant Clerk Magistrate		
02/21/2020	Event Result:: Motion Hearing scheduled on: 02/21/2020 09:23 AM Has been: Held as Scheduled Comments: ftr 1 Hon. Michael K Callan, Presiding Staff: Terrence C Ginley, Assistant Clerk Magistrate Michael T Sarnacki, Esq., Assistant Clerk Magistrate		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
06/30/2021	<p>Offense Disposition:: Charge #1 FIREARM VIOL WITH 2 PRIOR VIOLENT/DRUG CRIMES c269 §10G(b) On: 06/30/2021 Judge: Hon. Francis E Flannery By: Hearing on Plea Offer/Change Guilty Verdict</p> <p>Charge #2 ASSAULT W/DANGEROUS WEAPON c265 §15B(b) On: 06/30/2021 Judge: Hon. Francis E Flannery By: Hearing on Plea Offer/Change Not Guilty Verdict</p> <p>Charge #3 ASSAULT W/DANGEROUS WEAPON c265 §15B(b) On: 06/30/2021 Judge: Hon. Francis E Flannery By: Hearing on Plea Offer/Change Not Guilty Verdict</p> <p>Charge #4 A&B c265 §13A(a) On: 06/30/2021 Judge: Hon. Francis E Flannery By: Hearing on Plea Offer/Change Not Guilty Verdict</p> <p>Charge #5 RESIST ARREST c268 §32B On: 06/30/2021 Judge: Hon. Francis E Flannery By: Hearing on Plea Offer/Change Not Guilty Verdict</p>		
06/30/2021	<p>Event Result:: Jury Trial scheduled on: 06/30/2021 09:00 AM Has been: Held as Scheduled Comments: FTR-2 A. Foulks Hon. Francis E Flannery, Presiding Staff: Shana Wilson, Assistant Clerk Magistrate</p>		
06/30/2021	<p>The defendant/petitioner is committed without bail for the following reason: Per Order of the Court. Next Date: 7/13/21</p> <p>Judge: Flannery, Hon. Francis E</p>	69	
06/30/2021	List of exhibits	73	Image
06/30/2021	Waiver of trial by jury	74	Image
06/30/2021	<p>Verdict affirmed, verdict slip filed</p> <p>Count 1: Guilty</p>	75	Image
06/30/2021	<p>Verdict affirmed, verdict slip filed</p> <p>Count 2: Not Guilty</p>	76	Image
06/30/2021	<p>Verdict affirmed, verdict slip filed</p> <p>Count 3: Not Guilty</p>	77	Image
06/30/2021	<p>Verdict affirmed, verdict slip filed</p> <p>Count 4: Not Guilty</p>	78	Image
06/30/2021	<p>Verdict affirmed, verdict slip filed</p> <p>Count 5: Not Guilty</p>	79	Image
06/30/2021	List of jurors filed.	80	Image
07/09/2021	<p>Event Result:: Hearing for Sentence Imposition scheduled on: 07/13/2021 09:01 AM Has been: Not Held For the following reason: Transferred to another session Hon. Jane E Mulqueen, Presiding Staff: Brian Dolaher, Assistant Clerk Magistrate</p>		
07/13/2021	<p>Event Result:: Conference to Review Status scheduled on: 07/13/2021 09:35 AM Has been: Held as Scheduled Comments: administrative Shana Wilson, Presiding Staff: Michael T Sarnacki, Esq., Assistant Clerk Magistrate Lauramarie Sirois, Assistant Clerk Magistrate</p>		
07/28/2021	<p>Event Result:: Hearing for Sentence Imposition scheduled on: 07/28/2021 09:00 AM Has been: Held as scheduled Comments: FTR 1 Hon. Francis E Flannery, Presiding Staff: Michael T Sarnacki, Esq., Assistant Clerk Magistrate Lauramarie Sirois, Assistant Clerk Magistrate</p>		
07/28/2021	<p>Defendant warned pursuant to alien status, G.L. c. 278, § 29D. Judge: Flannery, Hon. Francis E</p>		
07/28/2021	<p>Defendant warned pursuant to the habitual offender statute G.L. c. 279, § 25(d) Judge: Flannery, Hon. Francis E</p>		
07/28/2021	<p>Defendant warned as to submission of DNA G.L. c. 22E, § 3 Judge: Flannery, Hon. Francis E</p>		
07/28/2021	<p>Defendant notified of right of appeal to the Appellate Division of the Superior Court within ten (10) days. Judge: Flannery, Hon. Francis E</p>		
07/28/2021	<p>Defendant notified of right of appeal to the Appeals Court within thirty (30) days. Judge: Flannery, Hon. Francis E</p>		
07/28/2021	<p>Defendant waives rights.</p> <p>Judge: Flannery, Hon. Francis E</p>	81	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
06/24/2021	Scheduled: Judge: Flannery, Hon. Francis E Event: Jury Trial Date: 06/25/2021 Time: 02:00 PM Result: Not Held		
06/24/2021	Scheduled: Judge: Flannery, Hon. Francis E Event: Jury Trial Date: 06/28/2021 Time: 09:00 AM Result: Held as Scheduled		
06/24/2021	Habeas Corpus for defendant issued to Hampden County House of Correction returnable for 06/25/2021 02:00 PM Jury Trial. PHYSICAL HABE TO COURTHOUSE RE- Motions to be heard only @ 2PM , So please have Deft. here prior to 2 PM	64	Image
06/25/2021	Event Result:: Hearing on Motion(s) in Limine scheduled on: 06/25/2021 10:00 AM Has been: Held as Scheduled Comments: FTR 2 Amy F. Hon. Francis E Flannery, Presiding Staff: Shana Wilson, Assistant Clerk Magistrate		
06/25/2021	Event Result:: Jury Trial scheduled on: 06/25/2021 10:00 AM Has been: Not Held For the following reason: Other event activity needed Comments: Motions in limine held Hon. Francis E Flannery, Presiding Staff: Shana Wilson, Assistant Clerk Magistrate		
06/25/2021	Scheduled: Judge: Flannery, Hon. Francis E Event: Jury Trial Date: 06/29/2021 Time: 09:00 AM Result: Held as Scheduled		
06/25/2021	Endorsement on Motion in limine to admit in court identification of the defendant, (#55.0): ALLOWED		Image
06/25/2021	Habeas Corpus for defendant issued to Hampden County House of Correction returnable for 06/28/2021 09:00 AM Jury Trial. Physical habe to issue/ please have deft. here at 9AM	65	Image
06/25/2021	Endorsement on Motion in limine to exclude mention of prior convictions and prior bad acts, (#60.0): ALLOWED		Image
06/25/2021	Endorsement on Motion in limine to admit the testimony of Lindsay Hawk regarding prior surveillance camera placement and to admit a portion of prior surveillance video from the La Mejor Bodega, (#61.0): ALLOWED		Image
06/25/2021	Endorsement on Motion in limine to exclude mention the Keison Cuffee was charged with murder, (#63.0): ALLOWED		Image
06/25/2021	Witness list Judge: Flannery, Hon. Francis E Applies To: Hampden County District Attorney (Prosecutor)	66	Image
06/28/2021	Event Result:: Conference to Review Status scheduled on: 06/30/2021 09:35 AM Has been: Canceled For the following reason: Court Order Comments: Trial began Hon. Francis E Flannery, Presiding Staff: Shana Wilson, Assistant Clerk Magistrate		
06/28/2021	Event Result:: Jury Trial scheduled on: 06/28/2021 09:00 AM Has been: Held as Scheduled Comments: Ftr 2 Amy F. Hon. Francis E Flannery, Presiding Staff: Shana Wilson, Assistant Clerk Magistrate		
06/28/2021	Scheduled: Judge: Flannery, Hon. Francis E Event: Jury Trial Date: 06/30/2021 Time: 09:00 AM Result: Held as Scheduled		
06/28/2021	Witness list Defendant's list of potential witnesses Applies To: Glenn, Esq., Janet E (Attorney) on behalf of Cuffee, Kieson S (Defendant)	70	Image
06/28/2021	Defendant 's Notice of proposed redactions/stipulation(s) for jail phone call	71	Image
06/29/2021	Habeas Corpus for defendant issued to Hampden County House of Correction returnable for 06/29/2021 09:00 AM Jury Trial. before Judge Flannery @ 9:00am Hampden Superior Court	67	
06/29/2021	Habeas Corpus for defendant issued to Hampden County House of Correction returnable for 06/30/2021 09:00 AM Jury Trial. emailed 6/29/21	68	
06/29/2021	Event Result:: Jury Trial scheduled on: 06/29/2021 09:00 AM Has been: Held as Scheduled Comments: FTR 2 Amy F. Hon. Francis E Flannery, Presiding Staff: Shana Wilson, Assistant Clerk Magistrate		
06/29/2021	Defendant 's Motion for jury instruction on omissions in police investigations	72	Image
06/30/2021	Offense Disposition: Charge #1 FIREARM VIOL WITH 2 PRIOR VIOLENT/DRUG CRIMES c269 §10G(b) On: 06/30/2021 Judge: Hon. Francis E Flannery By: Hearing on Plea Offer/Change Guilty Verdict		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
06/30/2021	<p>Offense Disposition:: Charge #1 FIREARM VIOL WITH 2 PRIOR VIOLENT/DRUG CRIMES c269 §10G(b) On: 06/30/2021 Judge: Hon. Francis E Flannery By: Hearing on Plea Offer/Change Guilty Verdict</p> <p>Charge #2 ASSAULT W/DANGEROUS WEAPON c265 §15B(b) On: 06/30/2021 Judge: Hon. Francis E Flannery By: Hearing on Plea Offer/Change Not Guilty Verdict</p> <p>Charge #3 ASSAULT W/DANGEROUS WEAPON c265 §15B(b) On: 06/30/2021 Judge: Hon. Francis E Flannery By: Hearing on Plea Offer/Change Not Guilty Verdict</p> <p>Charge #4 A&B c265 §13A(a) On: 06/30/2021 Judge: Hon. Francis E Flannery By: Hearing on Plea Offer/Change Not Guilty Verdict</p> <p>Charge #5 RESIST ARREST c268 §32B On: 06/30/2021 Judge: Hon. Francis E Flannery By: Hearing on Plea Offer/Change Not Guilty Verdict</p>		
06/30/2021	<p>Event Result:: Jury Trial scheduled on: 06/30/2021 09:00 AM Has been: Held as Scheduled Comments: FTR-2 A. Foulks Hon. Francis E Flannery, Presiding Staff: Shana Wilson, Assistant Clerk Magistrate</p>		
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06/30/2021	List of exhibits	73	Image
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06/30/2021	<p>Verdict affirmed, verdict slip filed</p> <p>Count 1: Guilty</p>	75	Image
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06/30/2021	<p>Verdict affirmed, verdict slip filed</p> <p>Count 4: Not Guilty</p>	78	Image
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06/30/2021	List of jurors filed.	80	Image
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07/13/2021	<p>Event Result:: Conference to Review Status scheduled on: 07/13/2021 09:35 AM Has been: Held as Scheduled Comments: administrative Shana Wilson, Presiding Staff: Michael T Sarnacki, Esq., Assistant Clerk Magistrate Lauramarie Sirois, Assistant Clerk Magistrate</p>		
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07/28/2021	<p>Defendant warned pursuant to alien status, G.L. c. 278, § 29D. Judge: Flannery, Hon. Francis E</p>		
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07/28/2021	<p>Defendant warned as to submission of DNA G.L. c. 22E, § 3 Judge: Flannery, Hon. Francis E</p>		
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07/28/2021	<p>Defendant notified of right of appeal to the Appeals Court within thirty (30) days. Judge: Flannery, Hon. Francis E</p>		
07/28/2021	<p>Defendant waives rights.</p> <p>Judge: Flannery, Hon. Francis E</p>	81	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/28/2021	<p>Offense Disposition::</p> <p>Charge #1 FIREARM VIOL WITH 1 PRIOR VIOLENT/DRUG CRIME c269 §10G(a) 269/10G/A-0 On: 06/30/2021 Judge: Hon. Francis E Flannery By: Hearing on Plea Offer/Change Guilty Verdict</p> <p>Charge #2 ASSAULT W/DANGEROUS WEAPON c265 §15B(b) On: 06/30/2021 By: Hearing on Plea Offer/Change Not Guilty Verdict</p> <p>Charge #3 ASSAULT W/DANGEROUS WEAPON c265 §15B(b) On: 06/30/2021 By: Hearing on Plea Offer/Change Not Guilty Verdict</p> <p>Charge #4 A&B c265 §13A(a) On: 06/30/2021 By: Hearing on Plea Offer/Change Not Guilty Verdict</p> <p>Charge #5 RESIST ARREST c268 §32B On: 06/30/2021 By: Hearing on Plea Offer/Change Not Guilty Verdict</p>		
07/28/2021	<p>Defendant sentenced:: Sentence Date: 07/28/2021 Judge: Hon. Francis E Flannery</p> <p>Charge #: 1 FIREARM VIOL WITH 1 PRIOR VIOLENT/DRUG CRIME c269 §10G(a) State Prison Sentence Not Less Than: 8 Years, 0 Months, 0 Days Not More Than: 10 Years, 0 Months, 0 Days</p> <p>Committed to MCI - Cedar Junction (at Walpole) Credits 994 Days</p> <p>Further Orders of the Court:</p> <p>Days credit by agreement and order of the court ALL fees including DNA are WAIVED</p>		
07/28/2021	<p>Issued on this date:</p> <p>Mittimus for Sentence (All Charges) Sent On: 07/28/2021 13:05:34</p>	82	Image
08/10/2021	Notice of appeal from sentence to MCI - Cedar Junction (at Walpole) filed by defendant	83	Image
08/10/2021	Notification to the Appellate Division sent.		
08/19/2021	Defendant 's Motion for appointment of appellate counsel n. 8/19/21 Flannery, J	84	Image
08/19/2021	Defendant 's Motion to withdraw defense counsel n. 8/19/21 Flannery,J	85	Image
08/19/2021	Defendant 's Certificate of service N. 8/19/21 Flannery, J	86	
08/19/2021	<p>Notice of appeal filed.</p> <p>Applies To: Cuffee, Kieson S (Defendant)</p>	87	
08/25/2021	General correspondence regarding Attorney Janet Glenn ordered transcript(s) for the appeal see attached	88	Image
09/15/2021	Endorsement on Motion for appointment of appellate counsel, (#84.0): ALLOWED		Image
09/15/2021	<p>Endorsement on Motion to withdraw, (#85.0): ALLOWED</p> <p>Judge: Flannery, Hon. Francis E</p>		Image
10/22/2021	Certification/Copy of Letter of transcript ordered from Court Reporter 06/23/2021 09:00 AM Jury Trial, 06/24/2021 09:00 AM Jury Trial, 06/25/2021 10:00 AM Hearing on Motion(s) in Limine, 06/28/2021 09:00 AM Jury Trial, 06/29/2021 09:00 AM Jury Trial, 06/30/2021 09:00 AM Jury Trial	89	Image
10/29/2021	<p>Attorney appearance</p> <p>On this date Molly Ryan Strehorn, Esq. added as Appointed - Appellate Action for Defendant Kieson S Cuffee</p>		Image
10/29/2021	<p>Attorney appearance</p> <p>On this date Janet E Glenn, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Kieson S Cuffee</p>		
03/09/2022	CD of Transcript of 06/23/2021 09:00 AM Jury Trial, 06/24/2021 09:00 AM Jury Trial, 06/25/2021 10:00 AM Hearing on Motion(s) in Limine, 06/28/2021 09:00 AM Jury Trial, 06/29/2021 09:00 AM Jury Trial, 06/30/2021 09:00 AM Jury Trial received from Jolanta Ewing, Cambridge transcriptions 617-547-5990.		
03/31/2022	CD of Transcript of 03/11/2020 09:25 AM Hearing on Dwyer Motion, 07/28/2021 09:00 AM Hearing for Sentence Imposition received from Donna Holmes Dominguez, DH reporting Services, Inc.		
04/05/2022	CD of Transcript of 03/11/2020 09:25 AM Hearing on Dwyer Motion, 07/28/2021 09:00 AM Hearing for Sentence Imposition received from Donna Holmes Dominguez DH reporting services, Inc..		
04/07/2022	Commonwealth files Nolle Prosequi as to count(s): 6 A&B c265 §13A(a), 7 ASSAULT TO ROB, ARMED c265 §18(b), 8 ASSAULT W/DANGEROUS WEAPON c265 §15B(b)	90	Image
04/08/2022	<p>Offense Disposition::</p> <p>Charge #1 FIREARM VIOL WITH 1 PRIOR VIOLENT/DRUG CRIME c269 §10G(a) 269/10G/A-0 On: 06/30/2021 Judge: Hon. Francis E Flannery By: Hearing on Plea Offer/Change Guilty Verdict</p> <p>Charge #2 ASSAULT W/DANGEROUS WEAPON c265 §15B(b) On: 06/30/2021 By: Hearing on Plea Offer/Change Not Guilty Verdict</p> <p>Charge #3 ASSAULT W/DANGEROUS WEAPON c265 §15B(b) On: 06/30/2021 By: Hearing on Plea Offer/Change Not Guilty Verdict</p> <p>Charge #4 A&B c265 §13A(a) On: 06/30/2021 By: Hearing on Plea Offer/Change Not Guilty Verdict</p> <p>Charge #5 RESIST ARREST c268 §32B On: 06/30/2021 By: Hearing on Plea Offer/Change Not Guilty Verdict</p> <p>Charge #6 A&B c265 §13A(a) On: 04/07/2022 Judge: Hon. Francis E Flannery By: Other Court Event Nolle Prosequi</p> <p>Charge #7 ASSAULT TO ROB, ARMED c265 §18(b) On: 04/07/2022 Judge: Hon. Francis E Flannery By: Other Court Event Nolle Prosequi</p> <p>Charge #8 ASSAULT W/DANGEROUS WEAPON c265 §15B(b) On: 04/07/2022 Judge: Hon. Francis E Flannery By: Other Court Event Nolle Prosequi</p>		
04/11/2022	<p>Attorney appearance</p> <p>On this date Maximilian J Bennett, Esq. dismissed/withdrawn for Prosecutor Hampden County District Attorney</p>		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
04/11/2022	Attorney appearance On this date Katherine E McMahon, Esq. added as Attorney for the Commonwealth for Prosecutor Hampden County District Attorney		
04/11/2022	Appeal: Statement of the Case on Appeal (Cover Sheet). Applies To: Hampden County District Attorney (Prosecutor); Cuffee, Kieson S (Defendant); McMahon, Esq., Katherine E (Attorney) on behalf of Hampden County District Attorney (Prosecutor); Strehorn, Esq., Molly Ryan (Attorney) on behalf of Cuffee, Kieson S (Defendant)	91	Image
04/11/2022	Notice of assembly of record sent to Counsel Applies To: Hampden County District Attorney (Prosecutor); Cuffee, Kieson S (Defendant); McMahon, Esq., Katherine E (Attorney) on behalf of Hampden County District Attorney (Prosecutor); Strehorn, Esq., Molly Ryan (Attorney) on behalf of Cuffee, Kieson S (Defendant)	92	Image
04/12/2022	Notice of Entry of appeal received from the Appeals Court	93	Image
04/21/2022	Appeal for review of sentence entered at the Appellate Division: Originating Court: Hampden County Receiving Court: Suffolk County Criminal Case Number: 2184AD091-HD ;		

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT DEPARTMENT

NO: 19-016

COMMONWEALTH

v.

KEISON CUFFEE

HAMPDEN COUNTY
SUPERIOR COURT
FILED

JAN 12 2021

John J. [Signature]
CLERK OF COURTS

DEFENDANT'S MOTION FOR DISCOVERY

NOW COMES the Defendant, Keison Cuffee, by and through counsel, pursuant to Rule 14(a)(2) of the Massachusetts Rules of Criminal Procedure, and moves that this Honorable Court order the Commonwealth and its agents to provide the Defendant with the following items of discovery:

1. Police reports from November 8, 2017 through November 8, 2019, where either or both Detectives Matthew Longo and Detective Eric Podgurski are listed as either the Reporting Officer or the Assisting Officer.
2. Field Interview Reports (FIOs) from November 8, 2017 through November 8, 2019, involving Detective Matthew Longo and/or Detective Eric Podgurski.

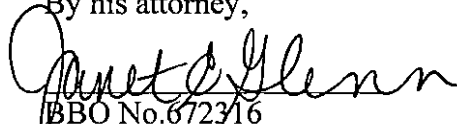
As reasons therefor, the Defendant states:

1. Said discovery is material and relevant to whether or not the warrantless stop of the Defendant, conducted by Detective Longo and Detective Podgurski was improperly motivated, in whole or in part, by the Defendant's race in violation of the Fourteenth Amendment to the United States Constitution and Articles 1 and 10 of the Massachusetts Declaration of Rights. See Commonwealth v. Long, 485 Mass. 711 (2020). An affidavit in support hereof is attached hereto and incorporated herein.

2/8/21 *Commonwealth v. Long, 485 Mass 711 (2020) does not apply to the stopal issue in this case, and if it were applicable, the defendant has not met the relevance standard under Mass R. Crim P. 14 for the requested documents, on this set of facts.*
2/12/21 Emailed to parties w/CC
35
for E. Malgou

Respectfully Submitted,
KEISON CUFFEE

By his attorney,



BBO No. 672316

1380 Main St., #409

Springfield, MA 01103

Tel. (413) 519-9837

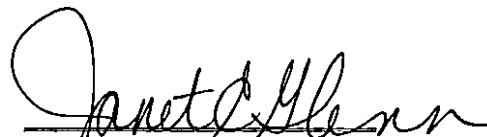
janetglenn1014@gmail.com

Dated: January 10, 2021

CERTIFICATE OF SERVICE

I, Janet E. Glenn, hereby certify that on this 11th day of January, 2021, I served a copy of the foregoing Defendant's Motion For Discovery, Affidavit of Counsel, and Memorandum of Law on the Commonwealth via electronic mail to:

Maximillian Bennett, Assistant District Attorney
max.bennett@state.ma.us



Janet E. Glenn, Esquire

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT DEPARTMENT
NO: 19-016

COMMONWEALTH

v.

KEISON CUFFEE

AFFIDAVIT OF COUNSEL

I, Janet E. Glenn, state the following is true to the best of my knowledge, information and belief:

1. I am the attorney-of-record for the Defendant in the above-entitled matter.
2. I have reviewed the discovery provided by the Commonwealth.
3. On November 8, 2018, the Defendant was stopped by Detective Matthew Longo, assisted by Detective Eric Podgurski, in the La Mejor Bodega, 344 White Street, Springfield, MA, as they were responding to a report of a ShotSpotter in the area.
4. The Defendant African American.
5. Detectives Longo and Podgurski are Caucasian.
2. The justification for the stop was an alleged observation by Detectives Longo and Podgurski that the Defendant “was running east on the sidewalk” and had an “unnatural gait” and “appeared to be supporting a weighted object on his right side with his right hand.”
3. The discovery sought, is material and relevant to whether or not the field stop of the Defendant by Detectives Longo and Podgurski was improperly motivated, in whole or in part, by the Defendant’s race in violation of the Fourteenth Amendment to the United States Constitution and Articles 1 and 10 of the Massachusetts Declaration of Rights. See

Long, 485 Mass. at 725 (noting said information discoverable by defendant under Rule 14(a)(2)).

Signed under the pains and penalties of perjury this ^{11th}~~10~~th day of January 2021


Janet E. Glenn

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT DEPARTMENT
NO: 19-016

COMMONWEALTH

v.

KEISON CUFFEE

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S MOTION FOR DISCOVERY**

STATEMENT OF FACTS

On November 8, 2018, there was a report of ShotSpotter activity at 57 Grand Street in Springfield, MA. Detectives Matthew Longo and Eric Podgurski were in the area of Grand Street and responded to the dispatch regarding the shot spotter. No description of a possible suspect had been broadcast. Officers Longo and Podgurski were wearing plain clothes and driving an unmarked vehicle. According to the police report, above-named officers noticed a black male running on the sidewalk. According to Officer Longo, the black male had an unnatural gait and appeared to be supporting a weighted object on his right side with his right hand. Again, according to the police report, the black male stopped running when he was alleged to have noticed officers who were wearing plain clothes and driving an unmarked vehicle. At this point the black male, later identified as the Defendant, slowed to a walk and put his hoodie on, and entered the La Major Bodega, located at 344 White Street, Springfield, MA. Detectives Longo and Podgurski followed the Defendant into the store, ostensibly to conduct a threshold inquiry.

ARGUMENT

I. DISCOVERY REQUESTS PURSUANT TO *COMMONWEALTH V. LONG* OULD NOT APPLY ONLY TO TRAFFIC STOPS¹

The Supreme Judicial Court (“SJC”) recently declared that in cases involving motor vehicle stops of minority drivers “[a] defendant has a right to reasonable discovery of evidence concerning the totality of the circumstances of the traffic stop; such discovery may include the particular officer’s recent traffic stops and motor vehicle-based field interrogations and observations (FIOs).” *Commonwealth v. Long*, 485 Mass. 711, 740 (2020). While *Long* contemplates motor vehicle stops, nothing in the decision indicates that the right to this discovery applies *only* to traffic stops. In fact, it would be inconsonant for the court to suggest that racial bias could play a part in a traffic stop but not play a part in a pedestrian stop. In Massachusetts, investigatory stops of pedestrians are not permitted unless police have a reasonable suspicion, based on specific and articulable facts, that the pedestrian “has committed, is committing or is about to commit a crime.” “‘A mere ‘hunch’ and ‘simple good faith on the part of the officer’ are not enough to justify a stop of a pedestrian.’” *Long*, 485 Mass. at 743 (Gants, J. concurring). Racial bias, however, whether explicit or implicit, can impact a police officer’s decision-making in the context of stop and frisks.

“[I]mplicit forms of racial bias still remain widely prevalent. These biases are held at a subconscious level with the biased individual often unaware that he holds such beliefs. [A] person experiences these biases automatically upon encountering the subject of said bias, which causes him to act in a discriminatory manner toward said subject, often without conscious awareness that he is doing so.

Thomas Stack, *Racial Biases within Stop and Frisk: The Product of Inherently Flawed Judicial Precedent*, September 21, 2018, Ramapo Journal of Law & Society, https://www.ramapo.edu/law-journal/thesis/racial-biases-within-stop-and-frisk-the-product-of-inherently-flawed-judicial-precedent/#_ftnref1 (internal citations omitted).

¹ 485 Mass. 711 (2020)

II. THE DEFENDANT IS ENTITLED TO THE DISCOVERY SOUGHT CONCERNING THE TOTALITY OF THE CIRCUMSTANCES OF THE WARRANTLESS FIELD STOP.

The requested discovery is relevant to the totality of the circumstances concerning the motivation for the field stop of the Defendant. Id. at 740. The SJC held in Long that,

When examining the totality of the circumstances, judges should consider factors such as: (1) patterns in enforcement actions by the particular police officer; (2) the regular duties of the officer involved in the stop; (3) the sequence of events prior to the stop; (4) the manner of the stop; (5) the safety interests in enforcing the motor vehicle violation; and (6) the specific police department's policies and procedures regarding traffic stops. These factors are not exhaustive; any relevant facts may be raised for the judge's consideration. Id. at 739-740.

With respect to the relevance of the first factor, “patterns in enforcement actions by the particular police officer,” the SJC explained,

To make such a demonstration, a defendant might point to an officer's patterns of enforcement before and after the stop at issue. It could be probative, for example, if a significant percentage of stops made by the officer in the preceding weeks or months involved drivers of the same race being stopped for minor traffic infractions, while those of other races were not. Or, if the officer repeatedly noted the same minor infraction, such as a failure to signal a lane change, while stopping drivers who shared the same protected class as the defendant. Such evidence need not be demonstrated to be statistically valid in order to support a reasonable inference. Id. at 740, n.7.

In the case at bar, the discovery sought is material and relevant under Rule 14 because the case involves the stop of an African American man, by two Caucasian police officers, after a report of shot spotter activity three or four blocks away, where no description had been given of any individual suspected of being involved. The Defendant need not demonstrate any further facts tending to show a racially motivated stop in order to be entitled to the discovery sought, because as the SJC explained, “this right to discovery applies equally to all claims of racially motivated stops, regardless of whether a defendant is pointing to the circumstances of the stop to raise a claim of discriminatory enforcement or is presenting the type of broader statistics contemplated

by Lora.” Id. at 741 citing Commonwealth v. Lora, 451 Mass. 425 (2008). Moreover, “the Supreme Judicial Court [has] ‘encouraged’ defense counsel to seek data related to race-based enforcement. Commonwealth v. Buckley, 478 Mass. 861, 871 (2018) (“encouraging” defendants to seek, develop and present to the Court statistical evidence of racial discrimination in criminal proceedings). See also Commonwealth v. Washington W., 457 Mass. 140 (2010), Brady v. Maryland, 373 U.S. 83 (1963).

III. THE REASON FOR THE STOP DOES NOT PRECLUDE THE DEFENDANT FROM SEEKING DISCOVERY TO EXPLORE WHETHER THE STOP MAY HAVE BEEN RACIALLY MOTIVATED.

Long makes clear that “a traffic stop motivated by race is unconstitutional, even if the officer also was motivated by the legitimate purpose of enforcing the traffic laws.” Long, 485 Mass. at 724. The Defendant “has a right to reasonable discovery of evidence concerning the totality of the circumstances of the [] stop” at issue in this matter, in order to investigate and/or prepare a motion challenging the validity of the traffic stop on equal protection grounds as having been racially motivated. Long, 485 Mass. at 725. To the extent that the Commonwealth argues that the nature of the call—a report of ShotSpotter activation, and observations by Detective Longo and Detective Podgurski—made the stop reasonable under the circumstances, that argument more appropriate for a hearing on a motion to suppress, should the defendant be successful in establishing an inference of racial profiling. In that case, “the defendant is entitled to a hearing at which the Commonwealth would have the burden of rebutting the inference.” Long, 485 Mass. at 713.

Finally, the Commonwealth is obligated to furnish discovery “‘relevant to the case and . . . in the possession, custody or control of the prosecutor, persons under the prosecutor’s direction or control, or persons who have participated in investigating or evaluating the case and either regularly report to the prosecutor’s office or have done so in this case (emphasis added).’” Commonwealth v. Thomas, 451

Mass. 451, 453-54 (2008), citing Commonwealth v. Beal, 429 Mass. 530, 532 (1999). The discovery sought by the Defendant—police reports and field interview reports—would be in the care and custody of the Springfield Police Department, and accessible to the Hampden County District Attorney's Office.

Therefore, because the information sought is material and relevant to the totality of the circumstances concerning Detective Longo and Detective Podgurski's motivation for stopping the Defendant, this Honorable Court should follow the holding and reasoning of the SJC in Long and order the Commonwealth to provide the Defendant with the requested discovery under Rule 14.

CONCLUSION

For the reasons stated herein, the Defendant prays that this Honorable Court grant the Defendant's Motion for Discovery.

Respectfully submitted

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Dated: January 11, 2021

Case	Docket	Date of Decision*	Discovery Allowed	Nature of investigation
Commonwealth v. Dilworth	1884CR00453 1884CR00469	1/18/2019	YES	Snapchat
		3/30/2021	YES	Snapchat
Commonwealth v. Josiah Watkins	1784CR00548	3/11/2019	NO (Rule 30)	Snapchat
Commonwealth v. Isaiah Bates	1884CR00540	3/14/2019	YES	Snapchat
Commonwealth v. Dana Lewis	1884CR00539	3/14/2019	YES	Snapchat
Commonwealth v. Dakym Murray	1884CR00650	3/14/2019	YES	Snapchat
		5/18/2021	YES	Snapchat
Commonwealth v. Jameel Sadler	1884CR00651	3/13/2019	YES	Snapchat
		5/18/2021	YES	Snapchat
Commonwealth v. Rumel Santana	1784CR00940	3/27/2019	YES	Snapchat
Commonwealth v. Herby Paul	1784CR00740	4/18/2019 Filed	---	Snapchat
Commonwealth v. Joshua Rodriguez	1884CR00631	6/6/2019 Filed	---	Snapchat
Commonwealth v. Robinson-Van Rader	1884CR00692	7/22/2019	YES	Pedestrian Stop

Case	Docket	Date of Decision*	Discovery Allowed	Nature of investigation
Commonwealth v. Allan Parrish	1984CR00257	7/22/2019	---	Snapchat
Commonwealth v. Jayrheik Thomas	1984CR00391	1/15/2020	YES	Snapchat
Commonwealth v. Aaren Howard	1884CR00693	9/17/2020	YES	Snapchat
Commonwealth v. Tino Fernandes	1884CR00896	10/7/2020	YES	Passenger in auto
Commonwealth v. Brandon Varela	1884CR00895	10/7/2020	YES	Snapchat
Commonwealth v. Kori Kelley	1784CR00636	11/16/2020	YES	Snapchat
Commonwealth v. Jaquori Lyons	1884CR00968	12/9/2020	YES	Snapchat
Commonwealth v. Trevon Bell	1884CR00969	12/9/2020	YES	Snapchat
Commonwealth v. Gelson Barbosa	1884CR00743	4/11/2022	Denied in part	Snapchat
Commonwealth v. Steven Depina	1902CR000579 BMC Roxbury	2/10/2020	Denied in part	Snapchat
Commonwealth v. Dwayne Johnson	2023CR6410 Springfield Dist. Ct.	4/11/2022	Denied in part	Snapchat

**The chart is organized in chronological order*

CERTIFICATE OF COMPLIANCE

I hereby certify, under the pains and penalties of perjury, that this application complies with the Massachusetts Rules of Appellate Procedure that pertain to contents of the application, including, but not limited to:

Rule 16(k) (required certification)

Rule 20 (a) (form and length of briefs, appendices, and applications for and responses to direct and further appellate review)

Rule 20(a)(4)(B))

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 11 because it is produced in proportional font in 2,000 words or less.

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Date: June 23, 2022

CERTIFICATE OF SERVICE

Pursuant to Mass. R. A. P. 13, I hereby certify, under the penalties of perjury, that on the 23rd day of June 2022, I have made service of this Application for Direct Appellate Review upon the attorney of record and by e-Filing to:

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Date: June 23, 2022