

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT FOR THE COMMONWEALTH

No. FAR-_____
2017-P-0963

COMMONWEALTH OF MASSACHUSETTS,
Appellant

V.

MAURICE R. PRIDGETT,
Defendant-Appellee

COMMONWEALTH'S APPLICATION FOR
LEAVE TO OBTAIN FURTHER APPELLATE REVIEW

SUFFOLK COUNTY

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For the Suffolk District

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April 26, 2018

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REQUEST FOR LEAVE TO OBTAIN FURTHER REVIEW

The Commonwealth respectfully requests leave from this Court to obtain further appellate review of the Appeals Court decision in *Commonwealth v. Maurice Pridgett*, 17-P-963, 2018 Mass. App. Unpub. LEXIS 298 (2018), in which the Appeals Court affirmed the allowance of a motion to suppress statements because the Court did not believe probable cause existed to support the defendant's arrest for receiving a stolen motor vehicle. Further appellate review is appropriate because the Appeals Court has issued contradictory unpublished opinions regarding what is sufficient to establish probable cause for receiving a stolen motor vehicle and this is an area of law that would benefit from clarification from this Court.

STATEMENT OF PRIOR PROCEEDINGS

On September 9, 2016, the defendant, Maurice Pridgett, was charged in the Dorchester Division of the Boston Municipal Court, docket #1607CR003398, with receiving a stolen motor vehicle, subsequent offense, in violation of G.L. c. 266, § 28 (a); and receiving stolen property over \$250, in violation of G.L. c. 266, § 60 (RA.2).¹

The defendant filed a motion to suppress his statements, arguing that they were obtained after an

¹ "(RA._)" herein refers to the record appendix attached to this application; "(Tr._:)" refers to the motion transcript.

improper warrantless seizure of his person (RA. 5-6). On November 30, 2016, the Honorable Thomas S. Kaplanes held an evidentiary hearing, after which he allowed the motion and suppressed all statements made by the defendant (Tr. 23). On December 1, 2016 the Commonwealth filed a timely notice appeal (RA.5,8).

On December 29, 2016, the Commonwealth applied to a single justice of the Supreme Judicial Court for Suffolk County for leave to appeal the allowance of the defendant's motion to suppress (RA. 9). On January 18, 2017, the Single Justice, Lowy J., allowed the Commonwealth's application and ordered that the case be transmitted to the Appeals Court for determination (RA. 9). This case was entered in the Appeals Court on July 24, 2017 (RA. 10).

On March 12, 2018, the Appeals Court (Milkey, Maldonado, Desmond, JJ.), heard oral argument (RA. 10). On April 6, 2018, the Appeals Court affirmed the allowance of the motion to suppress statements in an unpublished Rule 1:28 opinion, *Commonwealth v. Maurice Pridgett*, 17-P-963, 2018 Mass. App. Unpub. LEXIS 298 (2018), (RA. 10).

STATEMENT OF RELEVANT FACTS

Boston Police Officer Keith Kaplan was the sole witness at the evidentiary hearing. After the hearing, Judge Kaplanes stated “. . . in consideration of the evidence presented, I do credit the sole witness’

testimony in full.” (Tr. 23). Judge Kaplanes made no written factual findings. Instead, he relied on the facts and reasonable inferences that emerged from Officer Kaplan’s testimony to inform his legal rulings.

According to Officer Kaplan, on September 9, 2016, he was working in a “soft vehicle” when he observed the defendant leaning on a car in the area of Blue Hill Avenue and Westview Street (Tr. 6-8). Officer Kaplan was about 5-6 car lengths behind the defendant with an unobstructed view (Tr. 7). He conducted a query of the vehicle’s license plate, which revealed the vehicle was reported stolen (Tr. 7). The stolen status was subsequently confirmed by dispatch (Tr. 8). At some point, Officer Kaplan observed the defendant open the passenger front door and toss something inside the car (Tr. 8-9). Later, he observed the defendant sitting in the passenger seat of the car (Tr. 10). After making those observations, Officer Kaplan requested that a marked car with uniformed officers stop the defendant (Tr. 10).

After the defendant was stopped, Officer Kaplan approached him and observed that he had been handcuffed (Tr. 10-11, 17). Officer Kaplan immediately attempted to read the defendant his Miranda rights, but the defendant kept trying to speak, stating: “I didn’t steal it. You know, [i]t’s stolen. I didn’t steal it though.” (Tr. 11). Officer Kaplan ultimately

read the defendant his Miranda rights in full and asked the defendant if he understood those rights (Tr. 11). The defendant then stated: "yeah, I understand those rights. I didn't steal, I knew the car's stolen, but I didn't steal it." (Tr. 11). Officer Kaplan then asked the defendant if his fingerprints would be found on the steering wheel, to which the defendant responded, "I started the car, I sat in the driver's seat, but just to charge my phone and put the AC on." (Tr. 12-13).

While conducting a vehicle inventory, Officer Kaplan located a phone and tablet in the back seat of the car (Tr. 13). Officer Kaplan asked the defendant if anything in the car was his (Tr. 13). He responded that the iPhone and tablet were his, and "they may be stolen, but I bought them on the street." (Tr. 13).

The defendant's exclusive argument at the suppression hearing was that the defendant was illegally seized and that his statements were the fruit of an illegal seizure (Tr. 18; RA. 5). The Commonwealth asserted that there was probable cause to believe the car was stolen and the defendant exercised control over it (Tr. 18-19; 23). After hearing the testimony and argument, despite crediting Officer Kaplan's testimony in full, Judge Kaplanes concluded that "the Defendant's motion to suppress the statements is allowed due to the fact that the uniformed officers seized and

arrested the Defendant prior to Officer Kaplan's administering of the Miranda rights." (Tr. 23).

POINTS ON WHICH FURTHER APPELLATE REVIEW IS SOUGHT

The Commonwealth seeks further appellate review on one issues: whether the Appeals Court erred in affirming the allowance of the motion to suppress because it concluded the defendant's arrest for receiving a stolen motor vehicle was not supported by probable cause and the defendant's post-arrest statements were fruit of the poisonous tree.

FURTHER APPELLATE REVIEW IS APPROPRIATE

I. FURTHER APPELLATE REVIEW IS WARRANTED BECAUSE THE INTERESTS OF JUSTICE REQUIRE CLARIFICATION OF WHAT CONSTITUTES PROBABLE CAUSE FOR RECEIVING A STOLEN MOTOR VEHICLE.

The Appeals Court concluded the defendant's arrest was not supported by probable cause despite being found in a stolen motor vehicle primarily because it determined that the police cannot infer a defendant's knowledge that a vehicle was stolen from the mere possession of that vehicle. See *Pridgett* at *6. There is no controlling case law directly on point that addresses what constitutes probable cause regarding the element of knowledge in the context of receiving a stolen motor vehicle. *Commonwealth v. Saferian*, 366 Mass 89, 92-94 & n.4 (1974) suggests that a defendant's presence in a vehicle reported as stolen estab-

lishes probable cause to arrest him for receiving a stolen motor vehicle. Relying on *Saferian*, the Appeals Court, in *Commonwealth v. Vargas*, 12-p-1126, 2014 Mass. App. Unpub. LEXIS 923, *3-4 (Aug. 14, 2014), *review denied*, 469 Mass. 1109 (Oct. 1, 2014), similarly concluded that police had probable cause to arrest a defendant for receiving a stolen motor vehicle where he was observed exiting the front passenger seat of a stolen motor vehicle. The Appeals Court's decision in the instant case is wholly inconsistent with both *Saferian* and *Vargas*. Accordingly, the Commonwealth requests that this Court allow its petition in order to clarify whether being in control of a stolen motor vehicle in and of itself is sufficient to meet the minimal threshold of probable cause. The Commonwealth maintains that such a showing is sufficient to satisfy the probable cause standard.

"Probable cause to arrest exists when, at the moment of arrest, the facts and circumstances known to the police officers were sufficient to warrant a person of reasonable caution in believing that the defendant had committed or was committing a crime." *Commonwealth v. Hill*, 51 Mass. App. Ct. 598, 605 (2001). Reasonable inferences and common knowledge

are appropriate considerations for determining probable cause. *Commonwealth v. Kennedy*, 426 Mass. 703, 707 (1998). In the instant case, the defendant was not only observed sitting in the passenger seat of a stolen car, but was also observed opening and closing the car door to put his belongings in the car (Tr. 8-10). Consequently, there was probable cause to establish he exercised control over the vehicle and that the vehicle was stolen.

Admittedly, there was no direct evidence, other than the defendant's post-arrest statements, that he knew the car was stolen. However, it is certainly a reasonable inference that exercising control over a stolen vehicle would warrant a reasonable person to believe that the defendant knew the car was stolen. In fact, mere possession of a recently stolen vehicle is sufficient to prove beyond a reasonable doubt that a defendant had knowledge a car was stolen. See *Commonwealth v. Hunt*, 50 Mass. App. Ct. 565, 569 n.2 (2000); *Commonwealth v. Kirkpatrick*, 26 Mass. App. Ct. 595, 600-602 (1988) ("The inference permitted by possession of recently stolen property is a strong one. It may act as a substitute for direct proof of guilty

knowledge"). It therefore follows that if possession of a recently stolen item is sufficient to establish the element of knowledge beyond a reasonable doubt, it is reasonable to infer that possession of a stolen item in and of itself is sufficient to at least meet the much lower threshold required to establish probable cause. Moreover, such an interpretation is supported in law because it is for a factfinder to determine on facts and circumstances of each case whether property is "recently stolen" unless the theft was so remote as to render it a question of law. See *Commonwealth v. Sandler*, 368 Mass. 729, 744 (1975). Finally, such an interpretation is good public policy. To conclude otherwise would result in law enforcement being required to let an individual go when a person is seen using a stolen car as his own if there is no physical indication to suggest the car was stolen (i.e. a popped ignition) and the person did not confess to the police during a threshold inquiry. Therefore, though there was no evidence presented at the motion to suppress hearing regarding precisely when the vehicle was stolen, such information need not be known to merely establish probable cause on the element of knowledge.

CONCLUSION

For the foregoing reasons, the Commonwealth respectfully requests that this Honorable Court allow the Commonwealth's petition for further appellate review.

Respectfully submitted
FOR THE COMMONWEALTH,

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APRIL 2018

ADDENDUM**G.L. c. 266, § 28. Motor vehicle or trailer; theft or concealment; operation without owner's consent after revocation of license; penalty**

(a) Whoever steals a motor vehicle or trailer, whoever maliciously damages a motor vehicle or trailer, whoever buys, receives, possesses, conceals, or obtains control of a motor vehicle or trailer, knowing or having reason to know the same to have been stolen, or whoever takes a motor vehicle without the authority of the owner and steals from it any of its parts or accessories, shall be punished by imprisonment in the state prison for not more than fifteen years or by imprisonment in a jail or house of correction for not more than two and one-half years or by a fine of not more than fifteen thousand dollars, or by both such fine and imprisonment.

Evidence that an identifying number or numbers of a motor vehicle or trailer or part thereof has been intentionally and maliciously removed, defaced, altered, changed, destroyed, obliterated, or mutilated, shall be prima facie evidence that the defendant knew or had reason to know that the motor vehicle, or trailer or part thereof had been stolen.

A prosecution commenced under this subdivision shall not be placed on file or continued without a finding and the sentence imposed upon a person convicted of violating this subdivision for a second or subsequent offense shall not be reduced to less than one year imprisonment, nor shall any sentence imposed upon any person be suspended, or reduced, until such person shall have served one year of such sentence if convicted of a second or subsequent such offense.

A person convicted of a second or subsequent offense of violating the provisions of this subdivision shall not be eligible for probation, parole, furlough or work release; provided, however that the commissioner of correction may, on the recommendation of warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to said offender a temporary release in the custody of an officer of

such institution for the following purposes: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution.

* * * *

G.L. c. 266, § 60. Stolen goods; buying, receiving or aiding in concealment; penalty

Whoever buys, receives or aids in the concealment of stolen or embezzled property, knowing it to have been stolen or embezzled, or whoever with intent to defraud buys, receives or aids in the concealment of property, knowing it to have been obtained from a person by false pretense of carrying on a business in the ordinary course of trade or whoever obtains or exerts control over property in the custody of any law enforcement agency, or any individual acting on behalf of a law enforcement agency, which is explicitly represented to such person by any law enforcement officer or any individual acting on behalf of a law enforcement agency as being stolen and who intends to deprive its rightful owner permanently of the use and enjoyment of said property shall be punished as follows: if the value of such property does not exceed \$250, for a first offense by imprisonment in the house of correction for not more than 2 1/2 years or by a fine of not more than \$1,000; if the value of such property does not exceed \$250, for a second or subsequent offense by imprisonment in the house of correction for not more than 2 1/2 years or by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$5,000 or by both such fine and imprisonment; or if the value of such property exceeds \$250 by imprisonment in the house of correction for not more than 2 1/2 years or by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$5,000 or by both such fine and imprisonment.

It shall not be a defense that the property was obtained by means other than through the commission of a theft offense if the property was explicitly represented to the accused as having been obtained through the commission of a theft offense.

RECORD APPENDIX

Complaint.....	R.A. 2
Docket 1607CR003398.....	R.A. 3
Defendant's Motion to Suppress.....	R.A. 6
Notice of Appeal.....	R.A. 8
Docket SJ-2016-0526.....	R.A. 9
Docket 2017-P-0963.....	R.A. 10

CRIMINAL COMPLAINT PROSECUTOR COPY		DOCKET NUMBER 1607CR003398	NO. OF COUNTS 2	Trial Court of Massachusetts BMC Department
DEFENDANT NAME & ADDRESS Maurice R Pridgett 955 Blue Hill Ave Dorchester, MA 02124-				COURT NAME & ADDRESS BMC Dorchester 510 Washington Street Dorchester, MA 02124- (617)288-9500
DEFENDANT DOB 11/28/1980	COMPLAINT ISSUED 09/09/2016	DATE OF OFFENSE 09/09/2016	ARREST DATE 09/09/2016	
OFFENSE CITY / TOWN Boston	OFFENSE ADDRESS 989 BLUE Hill Ave			NEXT EVENT DATE & TIME 09/09/2016 02:20 PM
POLICE DEPARTMENT Boston PD Area B-3		POLICE INCIDENT NUMBER 162073434		NEXT SCHEDULED EVENT Arraignment
OBTN TBOS160090403	PCF NUMBER 2278744	DEFENDANT XREF ID 6352897		ROOM / SESSION Arraignment (1st) Session
The undersigned complainant, on behalf of the Commonwealth, on oath complains that on the date(s) indicated below the defendant committed the offense(s) listed below and on any attached pages.				

COUNT	CODE	DESCRIPTION
1	266/28/G	MOTOR VEH, RECEIVE STOLEN, SUBSQ.OFF. c266 §28(a)

On 09/09/2016 did buy, receive, possess, conceal or obtain control of a motor vehicle or trailer, the property of David Randolph, knowing or having reason to know the same to have been stolen, the defendant having previously been convicted of such an offense, in violation of G.L. c.266, §28(a).

PENALTY: state prison not less than 1 year, not more than 15 years; or jail or house of correction not less than 1 year, not more than 2½ years; or not more than \$15,000 fine ("whenever possible" any fine "shall equal twice the amount of" resulting damages or loss; or both such imprisonment and fine; and mandatory restitution; no continuance with a finding, filing, probation, parole, or release; no reduced or suspended sentence until 1 year served. CLERK-MAGISTRATE MUST REPORT CONVICTION TO REGISTRAR OF MOTOR VEHICLES, who shall revoke license for 5 years. District Court has final jurisdiction under G.L. c.218, §26.

2	266/60/A	RECEIVE STOLEN PROPERTY +\$250 c266 §60
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On 09/09/2016 did buy, receive or aid in the concealment of stolen or embezzled property of a value in excess of \$250, knowing such property to have been stolen or embezzled, in violation of G.L. c.263, §60.

PENALTY: state prison not more than 5 years; or jail or house of correction not more than 2½ years; or not more than \$5000.

SIGNATURE OF COMPLAINANT X	SWORN TO BEFORE CLERK-MAGISTRATE/ASST.CLERK/DEP. ASST. CLERK X	DATE
NAME OF COMPLAINANT	A TRUE COPY ATTEST X	CLERK-MAGISTRATE/ ASST. CLERK DATE

Notice to Defendant: 42 U.S.C. § 3796gg-4(e) requires this notice: If you are convicted of a misdemeanor crime of domestic violence you may be prohibited permanently from purchasing and/or possessing a firearm and/or ammunition pursuant to 18 U.S.C. § 922 (g) (9) and other applicable related Federal, State, or local laws.

CRIMINAL DOCKET		DOCKET NUMBER 1607CR003398		NO. OF COUNTS 2		Trial Court of Massachusetts BMC Department													
DEFENDANT NAME AND ADDRESS Maurice R Pridgett 955 Blue Hill Ave Dorchester, MA 02124-			DOB 11/28/1980		GENDER Male		COURT NAME & ADDRESS BMC Dorchester 510 Washington Street Dorchester, MA 02124-												
			DATE COMPLAINT ISSUED 09/09/2016																
			PRECOMPLAINT ARREST DATE 09/09/2016				INTERPRETER REQUIRED												
FIRST FIVE OFFENSE COUNTS <table style="width:100%; border-collapse: collapse;"> <tr> <th style="width:10%;">COUNT</th> <th style="width:15%;">CODE</th> <th style="width:55%;">OFFENSE DESCRIPTION</th> <th style="width:20%;">OFFENSE DATE</th> </tr> <tr> <td>1</td> <td>266/28/G</td> <td>MOTOR VEH, RECEIVE STOLEN, SUBSQ.OFF. c266 §28(a)</td> <td>09/09/2016</td> </tr> <tr> <td>2</td> <td>266/60/A</td> <td>RECEIVE STOLEN PROPERTY +\$250 c266 §60</td> <td>09/09/2016</td> </tr> </table>								COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE	1	266/28/G	MOTOR VEH, RECEIVE STOLEN, SUBSQ.OFF. c266 §28(a)	09/09/2016	2	266/60/A	RECEIVE STOLEN PROPERTY +\$250 c266 §60	09/09/2016
COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE																
1	266/28/G	MOTOR VEH, RECEIVE STOLEN, SUBSQ.OFF. c266 §28(a)	09/09/2016																
2	266/60/A	RECEIVE STOLEN PROPERTY +\$250 c266 §60	09/09/2016																
DEFENSE ATTORNEY <i>Sirna</i>			OFFENSE CITY/TOWN Boston		POLICE DEPARTMENT Boston PD Area B-3														
DATE & JUDGE		DOCKET ENTRY			DATE & JUDGE		FEES IMPOSED												
9-9-16 <i>Kaplan</i>		<input type="checkbox"/> Attorney appointed (SJC R. 3:10) <input type="checkbox"/> Alty denied & Deft. Advised per 211 D §2A <input type="checkbox"/> Waiver of Counsel found after colloquy Terms of release set: <input type="checkbox"/> PR <input type="checkbox"/> Bail \$5000 <input type="checkbox"/> See Docket for special condition <input type="checkbox"/> Held (276 §58A)			Counsel Fee (211D §2A(2)) \$ 150		<input type="checkbox"/> WAIVED												
					Counsel Contribution (211D §2)		<input type="checkbox"/> WAIVED												
					Default Warrant Fee (276 §30(1))		<input type="checkbox"/> WAIVED												
					Default Warrant Arrest Fee (276 §30(2))		<input type="checkbox"/> WAIVED												
					Probation Supervision Fee (276 §87A)		<input type="checkbox"/> WAIVED												
		<input checked="" type="checkbox"/> Arraigned and advised; <input checked="" type="checkbox"/> Potential of bail revocation (276 §58B) <input type="checkbox"/> Right to bail to review (276 §58) <input type="checkbox"/> Right to drug exam (111E §10) <input type="checkbox"/> Inquiry made by Court under 276 §56A			Bail Order Forfeited														
		Abuse Allegation: <input type="checkbox"/> C276 §56A form filed by Commonwealth <input type="checkbox"/> Allegation of abuse under C276 §56A found <input type="checkbox"/> No allegation of abuse under C276 §56A found			<input type="checkbox"/> Waiver of jury found after colloquy <input type="checkbox"/> Does not waive														
					Advised of trial rights as pro se (Dist. Ct. Supp.R.4) Advised of right of appeal to Appeals Ct. (M.R. Crim P.R. 28)														
SCHEDULING HISTORY																			
NO.	SCHEDULED DATE	EVENT	RESULT			JUDGE	TAPE START/STOP												
1	09/09/2016	Arraignment	<input type="checkbox"/> Held	<input type="checkbox"/> Not Held but Event Resolved	<input type="checkbox"/> Cont'd	<i>Kaplan</i>	3:38												
2	10/7/16	PTH	<input type="checkbox"/> Held	<input type="checkbox"/> Not Held but Event Resolved	<input type="checkbox"/> Cont'd	<i>Tynes</i>	10:57												
3	11-2-16	Motion / CTE	<input type="checkbox"/> Held	<input type="checkbox"/> Not Held but Event Resolved	<input checked="" type="checkbox"/> Cont'd	11/30/16 <i>M/S</i>													
4			<input type="checkbox"/> Held	<input type="checkbox"/> Not Held but Event Resolved	<input type="checkbox"/> Cont'd	<i>Kaplan</i>	10:24												
5			<input type="checkbox"/> Held	<input type="checkbox"/> Not Held but Event Resolved	<input type="checkbox"/> Cont'd		10:33												
6			<input type="checkbox"/> Held	<input type="checkbox"/> Not Held but Event Resolved	<input type="checkbox"/> Cont'd														
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8			<input type="checkbox"/> Held	<input type="checkbox"/> Not Held but Event Resolved	<input type="checkbox"/> Cont'd														
9			<input type="checkbox"/> Held	<input type="checkbox"/> Not Held but Event Resolved	<input type="checkbox"/> Cont'd														
10			<input type="checkbox"/> Held	<input type="checkbox"/> Not Held but Event Resolved	<input type="checkbox"/> Cont'd														
APPROVED ABBREVIATIONS ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection STR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance without finding scheduled to terminate PRO = Probation scheduled to terminate DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = probation revocation hearing.																			
A TRUE COPY ATTEST:		CLERK-MAGISTRATE / ASST CLERK X				TOTAL NO. OF PAGES		ON (DATE)											



CRIMINAL DOCKET - OFFENSES		DEFENDANT NAME Maurice R Pridgett		DOCKET NUMBER 1607CR003398	
COUNT / OFFENSE 1 MOTOR VEH, RECEIVE STOLEN, SUBSQ.OFF. c266 §28(a)		DISPOSITION DATE AND JUDGE			
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT RESTITUTION VAW ASSESSMENT		SURFINE COSTS BATTERER'S FEE OTHER	
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
FINAL DISPOSITION		JUDGE		DATE	
<input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated; defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)					
COUNT / OFFENSE 2 RECEIVE STOLEN PROPERTY +\$250 c266 §60		DISPOSITION DATE AND JUDGE			
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT RESTITUTION VAW ASSESSMENT		SURFINE COSTS BATTERER'S FEE OTHER	
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COUNT / OFFENSE		DISPOSITION DATE AND JUDGE			
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT RESTITUTION VAW ASSESSMENT		SURFINE COSTS BATTERER'S FEE OTHER	
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
FINAL DISPOSITION		JUDGE		DATE	
<input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated; defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)					

CRIMINAL DOCKET DOCKET ENTRIES		DEFENDANT NAME Maurice R Pridgett	DOCKET NUMBER 1607CR003398
DATE	DOCKET ENTRIES		
10/13/16	Superior ct petition for Bail Review on 9/26/16 Allowed - \$1,000 Cash. Scanner.		
10-9-16	Pre-trial Conference Report Filed 1 YNES		
"	Motion for Funds allowed 1		
"	Motion for Rule 17 Filed 1		
"	Same Bail \$1,000. Cash 1		
	Mugshot		
11/2/16	M/H for 11/30/16 M/S - Anne		
10-20	Bail (\$ on cash) Copy J		
11/30/16	J. Kaplan 3RD JUDGE ATTY Sohn		
	MOTION TO suppress allowed		
	Case set 12/21/16 for jury status		
	Bail reduced to \$200		
	- stay away BTH and owner of vehicle		
	issue back SC Jail for 12/21/16		
11/30/16	Habeas issued for 12/1/16		
12-1-16	Comm files notes of appeal JF		
APPROVED ABBREVIATIONS ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review GRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance without finding scheduled to terminate PRO = Probation scheduled to terminate OFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = probation revocation hearing.			

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BOSTON MUNICIPAL COURT
DORCHESTER DIVISION
DOCKET NO. 1607CR3398

COMMONWEALTH

v.

MAURICE PRIDGETT

MOTION TO SUPPRESS STATEMENTS

Now comes the Defendant in the above-entitled matter and hereby respectfully moves this Honorable Court, pursuant to Rule 13 of the Massachusetts Rules of Criminal Procedure, to suppress statements as evidence against him as a result of the warrantless search and seizure of Mr. Maurice Pridgett that took place on or about September 9, 2016 in Boston, Massachusetts.

As grounds therefor, it is stated that statements attributed to Mr. Pridgett were the result of a warrantless seizure of his person in violation of his rights under the Fourth and Fourteenth Amendments to the U.S. Constitution, and Articles 12 and 14 of the Massachusetts Declaration of Rights.

MAURICE PRIDGETT
Respectfully submitted
by his attorney,


RAJARSHI SINHA

BBO #: 670260
875 Massachusetts Ave., Suite 31
Cambridge, MA 02139
617-864-8055

Dated: 11/15/16

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BOSTON MUNICIPAL COURT
DORCHESTER DIVISION
DOCKET NO. 1607CR3398

COMMONWEALTH

v.

MAURICE PRIDGETT

AFFIDAVIT OF DEFENDANT

I, Maurice Pridgett, do hereby swear and depose to the best of my knowledge and belief as follows:

1. I am the defendant in the above-entitled complaint.
2. On September 9, 2016 I was on Blue Hill Ave. in the Dorchester section of Boston.
3. Officers approached me and took me into custody.
4. I was not shown an arrest warrant.
5. I understand the officers claim I made statements during the time of my being in their custody.
6. This affidavit does not include all the facts and circumstance known to the affiant about this event. It was prepared solely for the purpose of litigating the accompanying Motion to Suppress Evidence.

SIGNED AND SWORN UNDER THE PAINS AND PENALTIES OF PERJURY THIS _____
DAY OF NOVEMBER, 2016.

MAURICE PRIDGETT

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

BOSTON MUNICIPAL COURT
Dorchester Division
No. 1607CR003398

COMMONWEALTH OF MASSACHUSETTS

v.

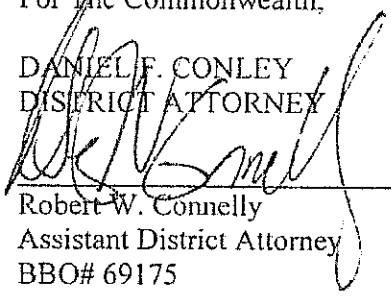
Maurice Pridgett,
Defendant

NOTICE OF APPEAL

The Commonwealth of Massachusetts hereby gives notice of its appeal of this Order by this Court (Kaplanes, J.) entered on November 30, 2016 suppressing the defendant's statements

Respectfully submitted
For The Commonwealth,

DANIEL F. CONLEY
DISTRICT ATTORNEY



Robert W. Connelly
Assistant District Attorney
BBO# 69175
510 Washington St
Dorchester, MA 02124
617.287.1195

November 30, 2016

**SUPREME JUDICIAL COURT
for Suffolk County
Case Docket**

COMMONWEALTH v. MAURICE PRIDGETT
SJ-2016-0526

CASE HEADER

Case Status	Interlocutory appeal allowed	Status Date	01/18/2017
Nature	Lv for interloc appeal	Entry Date	12/29/2016
Sub-Nature	Mot to Suppress	Single Justice	LO
TC Ruling	Motion allowed	TC Ruling Date	11/30/2016
SJ Ruling		TC Number	
Pet Role Below	Plaintiff in lower court	Full Ct Number	
Lower Court	Boston Municipal, Dorchester Div.	Lower Ct Judge	Thomas S. Kaplanes, J.

INVOLVED PARTY

ATTORNEY APPEARANCE

Commonwealth
Plaintiff/Petitioner

Julianne Campbell, Assistant District Attorney

Maurice Pridgett
Defendant/Respondent

Rajarshi Sinha, Esquire

DOCKET ENTRIES

Entry Date	Paper	Entry Text
12/29/2016		Case entered.
12/29/2016	#1	Commonwealth's Mass. R. Crim. P. 15 (A)(2) and G.L. c. 278, § 28E Application Requesting that This Court Grant Leave to Appeal an Order of the Dorchester Division of the Boston Municipal Court Granting the Defendant's Motion to Suppress Evidence filed by ADA Julianne Campbell.
12/29/2016	#2	Commonwealth's Record Appendix, filed by ADA Julianne Campbell.
01/13/2017		Under advisement. (Lowy, J.).
01/18/2017	#3	ORDER: Interlocutory appeal allowed; to Appeals Court. (Lowy, J.)
01/18/2017	#4	Notice to counsel/parties, regarding paper #3 filed.

As of 01/18/2017 20:01

APPEALS COURT
Full Court Panel Case
Case Docket

COMMONWEALTH vs. MAURICE R. PRIDGETT
2017-P-0963

CASE HEADER

Case Status	Decided: Summary Disposition Rule 1:28	Status Date	04/06/2018
Nature	Crim: Motor Vehicle Offense	Entry Date	07/24/2017
Sub-Nature	Receiving a stolen motor vehicle	SJ Number	
Appellant	Plaintiff	Case Type	Criminal
Brief Status		Brief Due	
Panel	Milkey, Maldonado, Desmond, JJ.	Argued/Submitted	03/12/2018
Citation	93 Mass. App. Ct. 1105	Decision Date	04/06/2018
Lower Court	Boston Municipal, Dorchester Div.	TC Number	
Lower Ct Judge	Thomas S. Kaplanes, J.	TC Entry Date	09/09/2016
FAR Number		SJC Number	

INVOLVED PARTY

ATTORNEY APPEARANCE

Commonwealth
Plaintiff/Appellant
Blue brief & appendix filed
1 Extension, 55 Days

John P. Zanini, A.D.A.
Withdrawn
Julianne Campbell, A.D.A.

Maurice R. Pridgett
Defendant/Appellee
Red brief filed

William M. Driscoll, Esquire

BRIEFS

Appellant Commonwealth Brief

Appellee Commonwealth Brief

DOCKET ENTRIES

Entry Date	Paper	Entry Text
07/24/2017		Transcript Volume: 11/30/2016 - Motion to Suppress (includes two paper copies) .
07/24/2017	#1	Lower Court Assembly of the Record Package
07/24/2017	#2	Notice of entry sent.
07/25/2017	#3	Docketing Statement filed for Commonwealth by Attorney Julianne Campbell.
07/25/2017	#4	Notice of appearance filed for Commonwealth by Attorney Julianne Campbell.
09/01/2017	#5	Motion of Appellant to extend date for filing brief and appendix filed for Commonwealth by Attorney Julianne Campbell.
09/05/2017		RE#5: Allowed to 10/30/2017. Notice sent.
10/26/2017	#6	Appellant brief filed for Commonwealth by Attorney Julianne Campbell.
10/26/2017	#7	Appendix filed for Commonwealth by Attorney Julianne Campbell.
11/27/2017	#8	Appellee brief filed for Maurice R. Pridgett by Attorney William Driscoll.
01/10/2018		Notice sent seeking information on unavailability for oral argument in March 2018
01/31/2018	#9	Notice of 03/12/2018, 9:30 AM argument at John Adams Courthouse, Courtroom 3 (a3) sent.
02/02/2018		Letter from William M. Driscoll, Esquire re: will appear and argue on 03/12/2018.
02/22/2018		Scheduling Update and Notice of Oral Argument Pilot Program sent.
03/12/2018		Oral argument held. (Milkey, J., Maldonado, J., Desmond, J.).
04/06/2018	#10	Decision: Rule 1:28 Order allowing motion to suppress statements affirmed. (Milkey, Maldonado & Desmond, JJ.). *Notice.

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify under the pains and penalties of perjury that I have today made service on the defendant by directing that a copy of the attached motion be sent by first-class mail, postage prepaid, to his attorney:

William Driscoll
119 Drum Hill Road # 381
Chelmsford, Massachusetts 01824
wmd@driscollesq.com

/s/Julianne Campbell
JULIANNE CAMPBELL
Assistant District Attorney
For The Suffolk District

April 26, 2018

No. FAR-_____
2017-P-0963

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT FOR THE COMMONWEALTH

COMMONWEALTH OF MASSACHUSETTS,
Appellant,

V.

MAURICE R. PRIDGETT,
Defendant-Appellee

COMMONWEALTH'S APPLICATION FOR
LEAVE TO OBTAIN FURTHER APPELLATE REVIEW

SUFFOLK COUNTY

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

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

17-P-963

COMMONWEALTH

vs.

MAURICE R. PRIDGETT.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendant was arrested when he was sitting in the passenger seat of a stolen car. He was charged with receiving a stolen motor vehicle, subsequent offense, and receiving stolen property over \$250 with respect to certain items found in the car. The defendant filed a motion to suppress the statements he made to a police officer after the arrest. That motion was allowed by a Boston Municipal Court judge. On the Commonwealth's interlocutory appeal, we affirm.

Background. The following facts were elicited at a hearing on the motion to suppress.¹ On September 9, 2016, a police officer was patrolling the Mattapan section of Boston in his unmarked vehicle. On one of the streets, he noticed the

¹ The motion judge made no written findings of fact, but he credited "in full" the testimony of the police officer who was the sole witness at the motion hearing.

defendant leaning against a car while speaking on a cellular telephone. After the officer checked the vehicle's license plate number against a database, he learned that the vehicle had been stolen, and he contacted a police dispatcher to confirm that. As the officer was waiting for the dispatcher's response, he saw the defendant open the front door of the car on the passenger side, toss something inside the vehicle, and then resume leaning against the vehicle.² After observing the defendant enter the vehicle and sit in its front passenger seat, the officer told back-up patrol units to "move in" on the defendant, which they did.

Three uniformed patrol unit officers then removed the defendant from the car and placed him in handcuffs. Shortly after, the first officer approached and attempted to administer Miranda warnings. However, as the officer was giving the warnings, the defendant volunteered that he knew that the car had been stolen but that he had not stolen it. After the officer succeeded in completing the Miranda warnings, the defendant repeated his statements. In response to the officer's inquiry whether he would find the defendant's fingerprints on the vehicle's steering wheel, the defendant added that he had started the car in order to charge his telephone and turn on the

² The officer testified that the car was not running at that time.

air conditioner. The defendant also stated that a cellular telephone and a "tablet" device found in the car were his but might have been stolen because he bought them "on the street."

Arguing that the police lacked probable cause to arrest him and search the vehicle, the defendant moved to suppress the statements he made to police following those events. The judge allowed the motion and the Commonwealth appealed.

Discussion. As noted, the judge fully credited the testimony of the Commonwealth's sole witness, and there is no dispute as to the subsidiary facts. We "conduct an independent review of [the motion judge's] ultimate findings and conclusions of law." Commonwealth v. Jimenez, 438 Mass. 213, 218 (2002).

We begin our review by examining the grounds on which the judge relied in allowing the defendant's motion. The judge stated that he was allowing it "due to the fact that the [patrol unit] officers seized and arrested the [d]efendant prior to [the first officer's] administering of the Miranda rights" (emphasis supplied). To the extent the judge meant the latter part of the statement to be taken literally, his referenced ground finds no support in the case law, as both parties acknowledge. Indeed, while there is no prohibition on giving Miranda warnings before a defendant is arrested, they are typically given after arrest.

At the same time, the judge's statement may simply have been a slip of the tongue, as the Commonwealth acknowledged at

oral argument. It may well be that the actual reason the judge allowed the motion was the one argued by the defendant, namely that his arrest was unsupported by probable cause and that the statements he made must be suppressed as the fruit of the poisonous tree. See Commonwealth v. Lunden, 87 Mass. App. Ct. 823, 826 (2015), and cases cited. In either event, because we can affirm the judge's order on any grounds supported by the record and findings, see Commonwealth v. Va Meng Joe, 425 Mass. 99, 102 (1997), we turn to whether the seizure of the defendant was lawful.

The Commonwealth correctly does not dispute that in the circumstances the patrol unit officers effected an arrest of the defendant, which required probable cause in order to be lawful.³ See Commonwealth v. Landry, 438 Mass. 206, 210 (2002).

"[P]robable cause exists where, at the moment of arrest, the facts and circumstances within the knowledge of the police are enough to warrant a prudent person in believing that the individual arrested has committed or was committing an offense." Commonwealth v. Storey, 378 Mass. 312, 321 (1979), cert. denied, 446 U.S. 955 (1980). Here, it is uncontested that the defendant

³ The Commonwealth presented no evidence at the suppression hearing indicating that the detention and handcuffing of the defendant was justified on a lesser basis than probable cause, such as being within the scope of a lawful investigatory stop or reasonably necessary to ensure officer or public safety. See, e.g., Commonwealth v. Williams, 422 Mass. 111, 118-119 (1996).

was arrested because he was believed to have committed the crime of receiving a stolen motor vehicle. See G. L. c. 266, § 28(a). That offense requires proof of the following elements: "(1) the motor vehicle is stolen; (2) the defendant possessed the motor vehicle; and (3) the defendant knew that the motor vehicle was stolen." Commonwealth v. Aponte, 71 Mass. App. Ct. 758, 760 (2008) (quotation omitted). For the patrol officers to have probable cause to arrest the defendant, it must have been reasonable to believe, based on the facts and circumstances known to them and the first officer before the arrest, that these elements were satisfied.

As is uncontested, the police plainly had a solid basis for believing that the vehicle was stolen. Whether the police had a sufficient basis to believe that the defendant "possessed" the vehicle lies in at least some doubt. For purposes of G. L. c. 266, § 28(a), we have interpreted possession as "the exercise of dominion and control over the motor vehicle." Commonwealth v. McArthur, 55 Mass. App. Ct. 596, 598 (2002). The Commonwealth's strongest evidence to support a belief that the defendant had exercised dominion and control over the vehicle is the fact that -- in the absence of anyone else -- he had taken various actions that could be viewed as "proprietary" (leaning on the car, opening its door, putting something into the car, and occupying a passenger seat). Although this evidence was

marginal, we assume arguendo that it was sufficient to establish a reasonable basis for the police to believe that the defendant possessed the car.

With respect to knowledge that the vehicle has been stolen, we have long held, in the context of analyzing the sufficiency of evidence at trial, that possession alone is not enough to establish knowledge. See Commonwealth v. Johnson, 7 Mass. App. Ct. 191, 193 (1979) ("The defendant's presence as a passenger in the stolen car did not alone satisfy the statutory requirement of knowing possession of the vehicle . . . , but his presence supplemented by other incriminating evidence justified submission of the issue to the jury"). See also Commonwealth v. Namey, 67 Mass. App. Ct. 94, 98-99 (2006) (jury could find that "the defendant possessed sufficient knowledge that the car in which he was seated was, in fact, stolen," where the car's ignition had been "popped" and the door lock on the front passenger side was absent or damaged).

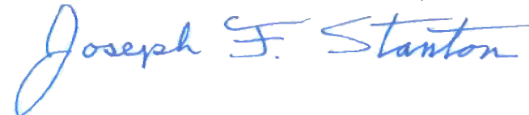
On the record before us, the Commonwealth is unable to point to any evidence that the police had prior to the defendant's arrest that could support a reasonable belief that he was aware that the car had been stolen. Acknowledging that, the Commonwealth asks us to adopt a rule that -- for purposes of assessing probable cause -- police can infer a defendant's knowledge that a vehicle was stolen from his mere possession of

it.⁴ Without foreclosing a possibility of drawing such an inference where there is robust proof that a defendant possessed a stolen vehicle, we decline to adopt that approach in this case, where proof of possession was marginal at best.

In sum, because the Commonwealth did not demonstrate that the police had probable cause to arrest the defendant, the statements he made subsequent to his arrest must be suppressed.⁵

Order allowing motion to
suppress statements
affirmed.

By the Court (Milkey,
Maldonado & Desmond, JJ.⁶),



Clerk

Entered: April 6, 2018.

⁴ There is no evidence in the record as to when the vehicle was stolen. Compare Commonwealth v. Hunt, 50 Mass. App. Ct. 565, 569 n.2 (2000) ("[W]hen a defendant possesses property 'recently' stolen, that possession alone is a sufficient basis for the jury to infer that he knows it to be stolen").

⁵ The Commonwealth has not argued that if the arrest was unlawful, the evidence at issue was not the fruit of the poisonous tree. In any event, we note that giving Miranda warnings to the defendant did not purge the taint of his illegal arrest, as administering Miranda warnings alone is insufficient attenuation when statements are made by a defendant following his or her unlawful arrest. See Commonwealth v. Damiano, 444 Mass. 444, 456 (2005).

⁶ The panelists are listed in order of seniority.