
COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPREME JUDICIAL COURT
No. FAR-_____

APPEALS COURT
No. 2019-P-0621

COMMONWEALTH OF MASSACHUSETTS

vs.

MICHAEL RODRIGUEZ

ON APPEAL FROM JUDGMENTS OF THE
HAMPDEN SUPERIOR COURT

APPLICATION FOR DIRECT APPELLATE REVIEW
(MASS. R. APP. P. 11)

1. Request For Direct Appellate Review

In 2012, this Court recognized that “the use of the word, ‘nigger,’ especially when directed by a white man toward an African-American man, poses a risk of inflaming a jury’s emotions matched by few other words.” *Commonwealth v. Bishop*, 461 Mass. 586, 596 (2012). Noting that “[o]rdinarily, racial slurs ... are so

prejudicial as to render them inadmissible, unless the probative value outweighs any prejudice that may result from having the jury hear them[,]” this Court admonished that “before a judge admits evidence that a defendant used this word to describe a man of color, the judge must be convinced that the probative weight of such evidence justifies this risk.” *Id.* (quoting *MCI Express, Inc. v. Ford Motor Co.*, 832 So. 2d 795, 800 (Fla. Dist. Ct. App. 2002)).

In the years since *Bishop* was decided, this Court’s expressed concerns about “[un]matched” inflammatory risk have proven to be both true and an understatement. Laudable social and cultural developments in the last decade have rendered this “nuclear bomb of racial epithets”¹ not merely toxic but radioactive. Perhaps the best reflection of these changes is the ongoing debate over whether *any* enunciation of the term is inherently wrongful “no matter the context or the intention of the speaker.” Randall Kennedy & Eugene Volokh, *The New Taboo: Quoting Epithets In The Classroom And Beyond*, 49 *Cap. U.L. Rev.* 1, 7-8 (2021) (detailing the concern being that giving voice to that epithet “is so hurtful to some that no pedagogical aim is worth the pain inflicted.”).

¹ Randall Kennedy, *Nigger: The Strange Career of a Troublesome Word* 28 (2002).

At issue in this case is the proper assessment of the prejudice created when a trial judge permits the Commonwealth, over vociferous defense objection, to present uncorroborated jailhouse informant testimony alleging that a homicide defendant used the word “nigger” in reference to an African-American decedent years after a shooting that the defendant maintains occurred in self-defense. In view of the changed and evolving racial climate in which criminal trials in the Commonwealth are occurring, this case invites a fact specific re-examination of the constitutional and evidentiary rules that govern the admissibility of evidence at a criminal trial, including whether such mechanisms can and should be adjusted to do a better job of guarding against the “[un]matched” inflammatory risk posed by racially charged evidence. These issues concern both “the Constitution of the Commonwealth” and “the Constitution of the United States”; and they are “of such public interest” and of such interest to criminal defendants generally that “justice requires a final determination by the full Supreme Judicial Court.” Mass. R.A.P. 11(a).

2. Statement of Prior Proceedings

In March of 2015, a Hampden County grand jury returned three indictments (HDCR2015-288-001-003) alleging that on

February 22, 2007, Defendant-Appellant Michael Rodriguez (1) committed the first degree murder of Julian Cartie, (2) possessed a firearm without a license and (3) unlawfully possessed a loaded firearm. [RA:3-5]. Following an eight-day trial (Agostini, J., presiding). [RA:16] [I:4], the jury found Rodriguez guilty of the lesser offense of murder in the second degree and both firearms charges. [VII:118-9]. He timely noticed his appeal. [R.A.:24].

Rodriguez moved post-trial to reduce the second-degree murder verdict to voluntary manslaughter pursuant to Mass.R.Crim.P .25(b)(2). [R.A.:25]. The Commonwealth opposed. [R.A.:66]. On February 13, 2019, the trial judge issued a Memorandum and Order denying the reduction. [R.A.:88-91]. With leave of the trial court, Rodriguez noticed his appeal of that denial on April 11, 2019. [R.A.92-93]. This Appeals Court consolidated the appeals.

3. Short Statement of Facts Relevant to the Appeal

This case arose out of the shooting death of Julian Cartie (“Cartie” or “the decedent”) in Springfield in the early morning of February 22, 2009. It was undisputed that Rodriguez shot Cartie, causing his death. The defense was that, in shooting the much larger, highly intoxicated Cartie as he was advancing on Rodriguez

during a heated street altercation, Rodriguez acted justifiably in self-defense or in the presence of mitigating circumstances that reduced his culpability. The Commonwealth sought to prove that Rodriguez's actions were not only unjustified but also taken with sufficient premeditation and/or extreme atrocity or cruelty to warrant a finding of murder in the first degree.

The jury heard testimony about the altercation and shooting from a number of percipient witnesses including Rodriguez himself. The testimony of these witnesses varied somewhat based on their perspectives, influenced in part by both alcohol and the passage of time. [II:166-168,192- 193,223;IV:74-75]. However, much of the evidence was uncontested and consistent in its description of a chance altercation between intoxicated strangers that, within seconds, exploded senselessly into the killing of a human being.

On February 21st, 2009, two groups of friends, all in their twenties [II:24,96,178], spent the night and early morning dancing and drinking at the same club on Main Street in Springfield. The two groups of friends were unacquainted and had no interactions while at the club, positive or negative. [II:102,120,180,193,231;V:158].

The first group ("the Cartie group") consisted of Julian Cartie ("Cartie"), a military-trained National Guardsman [II:97-98,154-155],

Cartie's brother Nathan Alvarado ("Alvarado"), and their friend, Angelo Delgado ("Delgado"). The Cartie group arrived at around 10:00 p.m. and remained drinking heavily until the club's closing time of 2:00 a.m. [II:98-101,156;III:178-179]. According to the medical examiner, Cartie's blood-alcohol measured as .310, a level consistent with the ingestion of "15 beers in one hour or more alcohol over a longer period of time." [V:49,53].

The second group of friends gathered at the club that night ("the Rodriguez group") consisted of Appellant, his girlfriend Jacinda Matias ("Matias"), an acquaintance named Magdiel Cortes ("Cortes"), and Cortes' girlfriend. [III:211-213;V:156-158-9;VI:226-227]. The Rodriguez group arrived at the club at around 10:30 or 11:00 and also remained until closing. [III:209-210,212-213]. According to all who testified, the Rodriguez group also engaged in a substantial amount of drinking. [III:212;IV:31,47;V:157-159;VII:226-227].

After the club closed, the Cartie group travelled in by car to a restaurant called Crown Chicken. [II:102-103,181-182]. As they parked and exited the car, Rodriguez and his companions – who also had just left the club [III:212-213] – happened past in Matias's late-model Honda Civic. [II:40-41,45, 103,181-183;III:162-163,212-

213;IV:204-210,213;23-24;V:153,159]. Matias was driving; Rodriguez was in the front passenger seat; Cortes and his girlfriend were in the back. [III:214;V:159].

Thinking there were all females in the car, Alvarado and Cartie attempted to get their attention by “hollering” and making noises at the Matias’ car. [II:182,182-183]. An “argument” or some “[b]ack and forth of words” involving “profanities” ensued. [II:105,104-105,184]. When Matias’ stopped at a red light, blocked in by other cars around it, Rodriguez exited and walked toward the rear of the car to retrieve a cellphone. [VI:177-178,198,200-202]. Witnesses testified that the argument continued when Rodriguez was out of the car. Cartie’s brother, Alvarado, testified that, as Rodriguez began retreating backwards towards the car, “that’s when my brother gets engaged.” [II:185].

At the time of the confrontation, Cartie weighed 181 pounds, and was five-feet, nine-inches tall. [V:61-62]. He was in top physical condition and very muscular. Id. As a National Guardsman, he received a week of military training every month and a couple of months in the summer. [II:97-98,154-155]. Rodriguez, who was nicknamed “Flacco” [I:161;V:152,174], was also around five-feet, nine-inches tall but weighed only about 110 pounds. [VI:181].

Alvarado and Delgado described him on the night in question as “thin”, “skinny” and “look[ing] like a teenager.” [II:108,158,214].

Much of what happened next was captured on non-auditory surveillance video presented by the Commonwealth and played to the jury. The video shows Rodriguez entering the frame from the right, walking a short distance away from Crown Chicken, bending down to pick something up from the street and then, seconds later, retreating backward in the direction from which he had come.

[02:00:46-02:00:49] [II:145-6,195]. As Rodriguez backs out of the camera’s frame to the right, Cartie enters from the left, walking in the street toward the Crown Chicken. [02:00:53-02:00:59]. Alvarado and Delgado follow Cartie at a distance. Id. Cartie pauses briefly at the front of a parked car, turns momentarily to Alvarado and Delgado and then suddenly accelerates toward Rodriguez, with Alvarado and Delgado following behind. [02:01:00-02:01:11]. Cartie exits the frame to the right, followed by Alvarado and Delgado. A puff of smoke is seen; Cartie runs back towards Alvarado and Delgado and then falls to the ground. [02:01:12-02:01:19].

It was undisputed that at trial that, while he was outside of the car, Rodriguez displayed and cocked a gun – a .40 caliber Glock semiautomatic pistol. As Cartie advanced, Delgado and Alvarado

each warned him of the gun. [II:110-111,153,186-188,224-225]. Cartie did not acknowledge them in any way. He just kept advancing and they kept following. [II:109-111,150,197,223-225,228,236-237].

Eyewitness Aileen Ramos – a passerby with connections to neither the Cartie group nor the Rodriguez group – described Cartie’s approach prior to hearing shots as “very fast” [II: 41-42] – indeed so fast that it caught her attention. [II:47,51]. Rodriguez testified that he cocked the gun: “[b]ecause [Cartie] was coming with his left hand in his back and I chambered it – the gun because when I point out the gun, he don’t stop. So I chambered the gun to – to see if he stop, at least he get scare and stop. He don’t stop. He keep coming at me.” [VI:182].

It was also undisputed that Rodriguez continued backing away from Cartie until he was up against Matias’ car. [II:49,55,150,151,160,171,173,185, 221,229-230]. The Commonwealth’s witnesses specifically described Rodriguez as looking “scared” during his retreat, [II:150-151], and “almost fall[ing] back” into the passenger-side door by the time he reached it [II:177], which apparently was open at the time. [II:108,160,171,185;III:77]. Rodriguez testified that he indeed was “very scared” because the advancing Cartie was bigger than him, threatening, and flanked by

two others and because he did not know “if [Cartie] going to kill [him] or not.” [VI:196].

Rodriguez raised his gun to shoot when Cartie had advanced to “[w]ithin arm’s length” of him. [II:135-136]. Alvarado and passerby Ramos both testified that Cartie was right at the car door when shots were fired. [II:48,185-186]. The Commonwealth’s ballistics expert estimated the likely distance between Cartie and the firearm at the time he was shot to be “certainly under two feet[, p]robably more foot or 18 inches” and possibly even closer. [III:71,99]. Delgado and Alvarado both testified that Cartie had raised his right hand and was grabbing for Rodriguez at the moment the shots were fired. [II:135,230-231]. This was corroborated by the findings and testimony of the Commonwealth’s medical and ballistics experts, who described the presence of injuries and gunpowder “stippling” on Cartie’s right hand. [III:70-71,98-99;V:23,57,65-66.]. Rodriguez testified that he only shot the gun “when he was on top of me.” [VI:183]. He stated that he did not intend to kill Cartie, and only shot him in an attempt to stop him from advancing further. [VI:184]. He testified that he felt that he had no other choice but to shoot. [VI:196-197].

Rodriguez fired three or four times in rapid succession, hitting

Cartie in the chest and abdomen. [II:40-41,55,61,76,80,86,111;V:29,50]. Cartie turned around, walked a few steps, and collapsed. [II:42]. His injuries resulted in rapid death. [V:50]. He had not been shot in the back or when he was down. [V:56].

Jailhouse Informant Testimony

Prior to trial, Rodriguez was offered a plea to manslaughter, which was apparently rejected. [I:3;IV:106]. At trial, the Commonwealth sought to bolster its “murder” case through the testimony of a jailhouse informant named José Rodriguez (“José”). José was a convicted felon with a long history of drug abuse [V:102-103] who, in September 2015, was housed at the same county jail Rodriguez awaiting trial on multiple charges arising from two separate cases, including assault and battery, violation of an abuse prevention order, larceny, and breaking and entering with the intent to commit a felony. [IV:99;V:90-91].

José had a history of serving as an informant in criminal cases in both Massachusetts and New York. [V:87-88;114-115]. José maintained his transactional relationship with police through a state trooper named Liam Jones. [IV:140;V:114-115,128,147]. He also had a long history of time spent in jail. [V:99]. He acknowledged in his testimony that, in his view, “it was okay” to tell people in jail

“something that wasn’t true” if he “needed to” and it was “good” and “[c]onvenient” for him. [V:101].

As part of his proffer to law enforcement in this case, José sought to have all of his pending charges – which collectively carried a maximum potential exposure of decades in prison [V:106-109] – resolved with a single sentence of six months. [V:105-106]. José’s demand was successful; he was able to obtain that disposition by agreement with the Commonwealth after providing police the information that formed the basis of his testimony. [IV:142;V:91,105].

José told the jury that he had been acquainted with Rodriguez for eight or nine years and they had met through a man named Jorge Guevara (“Guevara”). [IV:98]. Over defense counsel’s objection and without corroboration, José was permitted to allege that Rodriguez was his “drug supplier.” [IV:99].

José also described two conversations he purportedly had with Rodriguez at Guevara’s house in April or May of 2014. [IV:137]. In the first of these, Rodriguez was supposed to have sought guidance from José (via Guevara) as to why U.S. Marshals might be then “looking” for him. Over strenuous objection, José claimed that that Rodriguez volunteered that the reason was “probably for me killing the nigger soldier.” [VI:137-138]. José

claimed that a second similar conversation occurred at Guevara's house the next day during which the defendant "again stated the fact it has to be for the nigger soldier I shot" [IV:138] and also told José that he was "gonna run." [IV:139].

Prior to trial, defendant moved in limine to bar the Commonwealth from presenting José's uncorroborated allegations that, in April or May of 2014, Rodriguez referred to the decedent — an African-American national guardsman — as "the nigger soldier." [R.A.:23]. In the motion and during a pre-trial hearing, the defense asserted that Jose's uncorroborated racial allegations were not only entirely untrue but also devoid of probative value and could only serve to inflame and prejudice the jury against the defendant. [I:158-159]. While acknowledging "there's disputes [sic] as whether this was said or not" [I:159], the Commonwealth nevertheless opposed any limitation of its informant's allegations. Citing no authority, it argued that attributing the pejorative use of the slur "nigger soldier" to defendant was probative in that it:

shows the familiarity that the defendant would have with this particular witness. That someone would be more likely to use the racial slurs with someone who they are familiar with rather than someone they don't know.

[I:145]. Rodriguez countered that the probative value of the alleged racial epithet based on a "familiarity" theory was in fact nil,

particularly given the complete absence of any such language in the “hours and hours and hours” of defendant’s candid jail calls obtained by the Commonwealth, one of which included José, and in any event, the racial slur should be excluded as “highly inflammatory.” [I:148]. Stressing that “the racial epithet ... is probably the thing that bothers me the most relating to Jose Rodriguez,” defense counsel pleaded with the trial judge:

I don’t know if we can sanitize it at all. But when he’s talking about the National Guard, I mean, you know, I think it’s incredibly prejudicial and I would ask the Court to consider keeping that one word out of Jose Rodriguez’s testimony.

[I:158-159].

The trial judge denied the defendant’s motion in limine the next day, clearing the way for the Commonwealth to put its informant’s disputed “nigger soldier” allegation before the jury. The judge did so without discussion or findings as to the relevance, the probative value, or the prejudicial effect of this evidence, stating only: “I will allow the statement where the racial epithet came in. I’m going to allow that for the Commonwealth.” [II:5]. Defense counsel timely objected at the time of the ruling and again each time the epithet was repeated to the jury. [II:5;IV:92,137-138].

In closing, the prosecutor urged the jury to recall that its

informant José “provides you with some pretty damning statements the defendant makes.” [VII:75]. While demurring from repeating José’s inflammatory and disputed “nigger soldier” allegation herself, the prosecutor repeatedly focused the jury’s attention on it, reminding them twice during closing of defendant’s “statements to [José] about the soldier that he killed.” [VII:75].

4. Statement of The Issues of Law Raised by the Appeal

As relevant to this application², the issue of law raised by this appeal is whether the trial court abused its discretion and deprived defendant of a fair trial when it permitted the Commonwealth to admit disputed and uncorroborated allegations by a jailhouse informant that Rodriguez, years after the shooting, referred to the decedent as “the nigger soldier.”

This issue of was preserved through Defendant’s pre-trial motion in limine and timely objections at the time of the ruling and

² The defendant’s brief in the appeals Court also raises the following issues:

Whether the trial court’s instructions shifting the burden of proof defendant to establish mitigation through excessive use of force in self-defense violated due process and created a substantial risk of miscarriage of justice; and

Whether the trial judge erred and abused his discretion in denying the Rodriguez’s post-verdict motion to reduce his the second-degree murder verdict to voluntary manslaughter pursuant to Mass. R. Crim. P. 25 (b) (2).

again each time the epithet was repeated to the jury.

4. Argument

This Court has cautioned with *particularly* that “the use of the word, ‘nigger,’ especially when directed by a white man toward an African-American man, poses a risk of inflaming a jury’s emotions matched by few other words.” *Commonwealth v. Bishop*, 461 Mass. 586, 596 (2012). See *Commonwealth v. Mahdi*, 388 Mass. 679, 693 (1983) (discussing the risk that evidence involving racial animosity will “sweep jurors beyond a fair and calm consideration of the evidence.”).

For this reason, “before a judge admits evidence that a defendant used this word to describe a man of color, the judge must be convinced that the probative weight of such evidence justifies this risk.” *Bishop*, 461 Mass. at 596. *MCI Express, Inc. v. Ford Motor Co.*, 832 So. 2d 795, 800 (Fla. Dist. Ct. App. 2002) (“Ordinarily, racial slurs and ethnic epithets are so prejudicial as to render them inadmissible, unless the probative value outweighs any prejudice that may result from having the jury hear them”). See also *Commonwealth v. Washington*, 28 Mass. App. Ct. 271, 273 (1990) (“Even where questioning about race has some probative value, whether or not there is an objection, a trial judge ought to balance the probative

value of the evidence against the potential prejudice to a criminal defendant”).

The Trial Judge Failed Entirely To Weigh the Probative Value and Prejudicial Effect of José’s Disputed Racial Allegations at Trial.

“Only after ‘careful and reasoned’ scrutiny of the contested evidence ‘will [a] judge truly appreciate the substance and purpose of the evidence, thus enabling him [or her] fairly to balance the submission’s prejudicial impact against its probative value.’” *Commonwealth v. Peno*, 485 Mass. 378, 394 (2020). (quoting *Commonwealth v. Carey*, 463 Mass. 378, 390 (2012). Therefore, “[a] record of the thoughtful weighing of the risks of unfair prejudice, and the weight of the contested evidence, as well as steps the judge took to limit its quantity, may indicate a reasonable exercise of discretion.” *Id.*

Here, the judge’s summary declaration “I will allow the statement where the racial epithet came in. I’m going to allow that for the Commonwealth” [II:5], falls obviously short of the type of “record of [] thoughtful weighing of [] risks” indicative of “a reasonable exercise of discretion.” *Id.* As discussed below, the best explanation for the judge’s curious silence is that no reasonable balance of the relevance, probative value and prejudicial impact the

informant José's uncorroborated "nigger soldier" allegation could possibly justify the admission of that evidence in this case.

a. The Informant's Uncorroborated Racial Allegations were Devoid of Probative Value.

Jose's testimony places the disputed racial epithets in the context of larger purported admissions by Rodriguez that he "shot" and "killed" the decedent. Although admissions, as a general matter, satisfy the low threshold standard for relevance, their value in this case was minimal given that Rodriguez both did not contest that he shot and killed Cartie and was identified in-court by his companions on the night of the shooting. [III:241;V:166]. More importantly, whatever diminished probative value the larger admission may have retained, the probative value of the alleged use of the slur "nigger" within it was nil. *Commonwealth v. Chalue*, 486 Mass. 847, 885 (2021) (probative value of the word "nigger" in purported admission substantially outweighed by a risk of unfair prejudice where the Commonwealth was not prosecuting the case on such a theory).

The record is devoid of evidence that race or racial animus played any role in Cartie's February 22, 2009 shooting death or the conflict that preceded it. Nor did the Commonwealth suggest at any

time suggest such a relationship. *Contrast, Bishop*, 461 Mass. at 596-597. Indeed, the *only* justification offered by the Commonwealth for introducing racially charged evidence of “[un]matched” inflammatory risk” into a murder trial was that it might allow an inference of “familiarity” based on the following circular logic: (1) the Commonwealth’s jailhouse informant alleges, without corroboration, that Defendant referred to the decedent using a racial slur, (2) people are “more likely to use the racial slurs [sic] with someone who they are familiar with rather than someone they don’t know” (3) therefore, the slur itself is probative of a “familiarity” between Defendant and the jailhouse informant, (4) which is proof that Defendant would have made the uncorroborated statements to him. [I:145]. The tenuous nature of this “self-authenticating inflammatory statements” reasoning is obvious.

Indeed, this “familiarity” reasoning fails to connect to any of the bases on which prior bad act evidence is considered deemed admissible. *Commonwealth v. Helfant*, 398 Mass. 214, 224-225 (1986)). Mass. G. Evid. § 404(b)(2). While it “is well established that evidence of prior bad acts and *hostile* relationships is admissible to prove the hostile nature of the relationship between a *victim* and a defendant,” *Commonwealth v. Miller*, 475 Mass. 212, 229 (2016) (citing cases)

(emphasis added), no authority supports the proposition that evidence of prejudicial bad acts are admissible to suggest a familiar relationship with (and thereby bolster the contested testimony of) a non-victim witness for the Commonwealth who played no role in the crime charged. *Accord Commonwealth v. Facella*, 478 Mass. 393, 405 (2017).

It is also notable that, unlike every other published case involving admission of a defendant's use of racial epithets—all of which involve strong or incontrovertible evidence that the challenged epithets were in fact uttered, *see e.g. Commonwealth v. Cruzado*, 480 Mass. 275 (2018) (audio recording); *Commonwealth v. Rosa*, 468 Mass. 231, 241 (2014) (same); *Bishop*, 461 Mass. at 586 (police officer first hand testimony), the challenged testimony here was “perhaps the most notoriously *unreliable* type of evidence—statements of jailhouse informants who offer evidence against an accused in hopes of obtaining benefits in their own cases...” Keith A. Findley, Judicial Gatekeeping of Suspect Evidence: Due Process and Evidentiary Rules in the Age of Innocence, 47 Ga. L. Rev. 723, 725 (2013) (emphasis added). This Court has held that “[b]efore prior bad act evidence can be admitted against a defendant, the Commonwealth must satisfy the judge that ‘the jury [could] reasonably conclude that

the act occurred and that the defendant was the actor.”
Commonwealth v. Rosenthal, 432 Mass. 124, 126 (2000) (quoting
Huddleston v. United States, 485 U.S. 681, 689 (1988). Where, as here,
evidence of “[un]matched” inflammatory risk is being offered,
without corroboration, through the “most notoriously unreliable”
type of witness, a probing inquiry is warranted. The trial judge
provided none. The fact that the challenged statements were alleged
to have occurred more than five years after the shooting only further
undermined their probative value. *Commonwealth v. Butler*, 445
Mass. 568, 574 (2005).

b. The Jailhouse Informant’s Uncorroborated Racial Allegations
were Overwhelmingly and Unfairly Prejudicial.

On the other side of the ledger — prejudicial effect — it is
abundantly clear that any probative value that might be ascribed to
José’s uncorroborated racial allegation was grossly outweighed by
the risk of unfair prejudice to the defendant. *Crayton*, 470 Mass. at
249. Evidence is unfairly prejudicial “if it has ‘an undue tendency to
suggest decision on an improper basis[,]... if it ‘appeals to the jury’s
sympathies, arouses [their] sense of horror, provokes [their] instinct
to punish,’ or otherwise ‘may cause a jury to base [their] decision on
something other than the established propositions in the case.’”

Commonwealth v. Kindell, 84 Mass. App. Ct. 183, 188 (2013). As noted, this Court have acknowledged that the pejorative use of the slur “nigger” “poses a risk of inflaming a jury’s emotions matched by few other words.” *Bishop*, 461 Mass. at 596. If this is true (as surely it is), it cannot be gainsaid that repeated claims that Rodriguez, who is white, referred to the decedent, an African-American national guardsman, as “the nigger soldier” years after the incident had obvious potential “to inflame the jurors’ emotions and possibly deprive the defendant of an impartial jury.” *Berry*, 420 Mass. 109. Naturally and necessarily, this evidence would serve to divert the jury’s attention from fair and calm consideration of his defenses at trial—self-defense and/or mitigation—and to brand him as a contemptible racist and provoking a decision on that basis. This diversion deprived Rodriguez of his due process rights to present a defense and the right to have the jury fairly consider his defense without being unfairly swayed by this egregious and uncorroborated imputation of racial animosity into the case through its jailhouse informant. *Estes v. Texas*, 381 U.S. 532, 542-543 (1965) (guaranties of Due Process are violated, and the defendant is deprived of a fair trial, when proceedings give rise to a probability of prejudice); *Estelle v. Williams*, 425 U.S. 501, 503, 505 (1976) (a State

may not--consistent with the presumption of innocence--create trial conditions that affect the jurors' perception of the defendant unless there is a substantial government interest in doing so).

Here, this manifest risk of unfair prejudice could only have been exacerbated by the fact that the judge gave no contemporaneous limiting instructions—indeed no limiting instruction at all—limiting the purposes for which the inflammatory and disputed “nigger soldier” allegation could, and could not, be considered by the jury. However, given the “[un]matched” inflammatory risk” inherently posed by such evidence, there is reason to be skeptical of the capacity of even *proper* limiting instructions to adequately protect against inherent prejudice. Accord *See Commonwealth v. Di Marzo* 364 Mass. 669, 681 (1974) (Hennessey, J., concurring) (characterizing limiting instructions as “a mental gymnastic which is beyond, not only [the jury’s] power, but anybody[] else[’s]” and dismissing their ameliorative power as an “unmitigated fiction.”) (citations omitted). The trial judge’s failure to limit the jury’s use of the uncorroborated and objected-to “nigger soldier” allegations *at all* evinces an obliviousness to the unique risks inherent in the jailhouse informant’s inflammatory racial testimony and “a clear error of judgment in weighing’ the factors relevant to

the decision.’” *Mills*, 47 Mass. App. Ct. 506 (finding “[t]he judge’s omission to charge on so obvious a point on her own motion ... hard to understand”).³

In sum, because the probative value of the evidence was minimal and the potential for unfair prejudice was great, admission of the evidence “f[ell] outside the range of reasonable alternatives.” Moreover, where, as here, racial character evidence devoid of probative value and unmatched in its inflammatory virulence, *Bishop*, 461 Mass. 586, 596, is erroneously introduced at the behest of the Commonwealth [I:145], over defense objection [IV:92,137-138], and is repeatedly referenced in the Commonwealth’s case in chief [VI:137-138] and in its closing argument [VII:75], there is, at a minimum, “a reasonable possibility that the error might have contributed to the jury’s verdict.” *Commonwealth v. Alphas*, 430 Mass. 8, 23 (1999). A new trial is required. *Accord Commonwealth v. Stone*, 321 Mass. 471, 474 (1947) (“This evidence was of a highly prejudicial nature and we cannot say that the jury could not have been

³ The judge’s final charge, given five days after the fact, included a verbatim repetition of its earlier bad acts instruction. [VII:100-101]. As at trial, that instruction suggested no limitation on the use of the informant’s inflammatory racial testimony and provided no meaningful mitigation of its prejudicial potential and probable impact.

influenced by it. The doubt ought to be resolved in favor of the defendant.”).

6. Statement of Reasons Why Direct Appellate Review Is Appropriate

In the years since this Court last expounded on the “[un]matched” inflammatory risk posed by evidence of the pejorative use of the slur “nigger” laudable social and cultural developments have rendered this “nuclear bomb of racial epithets” not merely toxic but radioactive. This case squarely invites consideration of the proper assessment of the prejudice created when a trial judge permits the Commonwealth, over vociferous defense objection, to present such supremely inflammatory evidence, without corroboration, through a jailhouse informant. In view of the changed and evolving racial climate in which criminal trials in the Commonwealth are occurring, this case invites a fact specific re-examination of the constitutional and evidentiary rules that govern the admissibility of evidence at a criminal trial, including whether such mechanisms can and should be adjusted to do a better job of guarding against the “[un]matched” inflammatory risk posed by racially charged evidence. These issues concern both “the Constitution of the Commonwealth” and “the Constitution of

the United States”; and they are “of such public interest” and of such interest to criminal defendants generally that “justice requires a final determination by the full Supreme Judicial Court.” Mass. R.A.P.

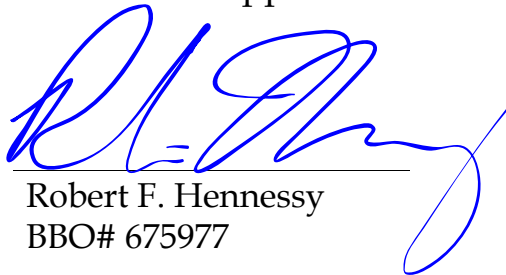
11(a).

CONCLUSION

For the foregoing reasons, direct appellate review should be allowed.

Respectfully submitted,
MICHAEL RODRIGUEZ,
Defendant-Appellant

By



Robert F. Hennessy
BBO# 675977

SCHNIPPER HENNESSY, PC
25 Bank Row, Suite 2S
Greenfield, MA 01301
Phone: (413) 325-8541
fax: (413)-325-8692
rhennessy@schnipperhennessy.com

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies pursuant to Mass. R. App. P. 11(b) that the foregoing Application complies with the typeface and type-volume requirements of Mass. R. App. P. 11(b) because it has been prepared in a proportionally spaced type face, Book Antiqua, using Microsoft Word in size 13 font, and its argument section contains **1,858** words (according to Microsoft Word's word count feature).

August 19, 2021



Robert Hennessy
BBO #675977

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 19, 2021, a true copy of this Application was filed through the Tyler Host system will be served electronically through that system on all Users and paper copies will be sent to those indicated as Non-Registered Participants, if any.



Robert Hennessy

**COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT**

HAMPDEN, SS.

**SUPREME JUDICIAL COURT
No. FAR-_____**

**APPEALS COURT
No. 2019-P-0621**

COMMONWEALTH OF MASSACHUSETTS

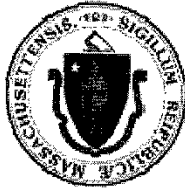
vs.

MICHAEL RODRIGUEZ

**ON APPEAL FROM JUDGMENTS OF THE
HAMPDEN SUPERIOR COURT**

APPENDIX

Docket Entries – Commonwealth v. Michael Rodriguez, No. 1579CR00288	1
Judge’s Ruling from the Bench on Defendant’s Motion in Limine to Exclude Racial Epithets	18



**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY
Public Docket Report**

1579CR00288 Commonwealth vs. Rodriguez, Michael

CASE TYPE:	Indictment	FILE DATE:	03/30/2015
ACTION CODE:	265/1-0	CASE TRACK:	C - Most Complex
DESCRIPTION:	MURDER c265 §1	CASE STATUS:	Open
CASE DISPOSITION DATE	04/13/2017	STATUS DATE:	03/30/2015
CASE DISPOSITION:	Disposed by Jury Verdict	CASE SESSION:	CR Session 3 - Ct. Rm 5
CASE JUDGE:	Agostini, John A		

PARTIES

Prosecutor Commonwealth	Attorney for the Commonwealth 338410 Katherine E McMahon Office of the District Attorney Office of the District Attorney Roderick L Ireland Courthouse 50 State Street Springfield, MA 01102 Work Phone (413) 505-5905 Added Date: 12/27/2017
Defendant Rodriguez, Michael 173 Elm Street, Apt. 31C Holyoke, MA 01040	Appointed - Appellate Action 600950 Neil L Fishman Massachusetts Bar PO Box 733 Cumberland Center, ME 04021 Work Phone (207) 409-8715 Added Date: 11/06/2017

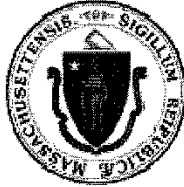
PARTY CHARGES

#	Offense Date/ Charge	Code	Town	Disposition	Disposition Date
1	02/22/2009 MURDER c265 §1 Sentence Date: 04/19/2017	265/1-0	Springfield	Life with Parole <i>Not greater than</i> Yrs Mos Days <i>Not less than</i> Yrs 15 Mos Days Guilty Verdict - Lesser Included	04/19/2017
2	02/22/2009 FIREARM, CARRY WITHOUT LICENSE c269 s.10(a) Sentence Date: 04/19/2017	269/10/J-1	Springfield	State Prison Sentence <i>Not greater than</i> Yrs 5 Mos 0 Days 0 <i>Not less than</i> Yrs 2 Mos 0 Days 0 Guilty Verdict	04/13/2017
3	02/22/2009 MACHINE GUN, POSSESS c269 §10(c) Sentence Date: 04/19/2017	269/10/N-0	Springfield	Committed to HOC <i>Term:</i> Yrs 2 Mos 6 Days 0 <i>To Serve:</i> Yrs 2 Mos 6 Days 0 Guilty Verdict	04/13/2017



**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY
Public Docket Report**

EVENTS				
Date	Session	Event	Result	Resulting Judge
04/23/2015	Criminal 1 - Ct. Rm. 1	Arraignment	Held as Scheduled	
08/13/2015	Criminal 1 - Ct. Rm. 1	Pre-Trial Hearing	Held as Scheduled	Rup
12/16/2015	Criminal 1 - Ct. Rm. 1	Evidentiary Hearing on Suppression	Not Held	Mason
12/16/2015	Criminal 1 - Ct. Rm. 1	Hearing on Motion to Continue	Held as Scheduled	Mason
02/09/2016	Criminal 1 - Ct. Rm. 1	Final Pre-Trial Conference	Not Held	Mason
02/24/2016	Criminal 1 - Ct. Rm. 1	Jury Trial	Not Held	Mason
02/24/2016	Criminal 1 - Ct. Rm. 1	Evidentiary Hearing on Suppression	Held as Scheduled	Sweeney
03/03/2016	Criminal 1 - Ct. Rm. 1	Evidentiary Hearing on Suppression	Not Held	Sweeney
03/22/2016	CR Session 2 - Ct. Rm 3	Evidentiary Hearing on Suppression	Held as Scheduled	Sweeney
04/07/2016	Criminal 1 - Ct. Rm. 1	Hearing on Motion to Continue	Held as Scheduled	Agostini
04/21/2016	Criminal 1 - Ct. Rm. 1	Final Pre-Trial Conference	Not Held	Agostini
05/09/2016	Criminal 1 - Ct. Rm. 1	Jury Trial	Not Held	Agostini
06/06/2016	Criminal 1 - Ct. Rm. 1	Hearing for Funds	Held as Scheduled	Page
09/01/2016	Criminal 1 - Ct. Rm. 1	Motion Hearing	Held as Scheduled	Mason
09/13/2016	Criminal 1 - Ct. Rm. 1	Final Pre-Trial Conference	Not Held	Carey
10/06/2016	Criminal 1 - Ct. Rm. 1	Jury Trial	Not Held	Carey
12/20/2016	Criminal 1 - Ct. Rm. 1	Motion Hearing	Held as Scheduled	Sweeney
01/04/2017	Criminal 1 - Ct. Rm. 1	Final Pre-Trial Conference	Not Held	McDonough
01/18/2017	Criminal 1 - Ct. Rm. 1	Jury Trial	Not Held	McDonough
02/15/2017	Criminal 1 - Ct. Rm. 1	Hearing for Funds	Held as Scheduled	Sweeney



**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY
Public Docket Report**

03/15/2017	Criminal 1 - Ct. Rm. 1	Motion Hearing	Not Held	Unassigned
03/15/2017	Hampden Civil/Criminal	Motion Hearing	Held as Scheduled	Carey
03/15/2017	Criminal 1 - Ct. Rm. 1	Final Pre-Trial Conference	Not Held	Unassigned
03/24/2017	Criminal 1 - Ct. Rm. 1	Trial Assignment Conference	Held as Scheduled	Unassigned
03/24/2017	Criminal 1 - Ct. Rm. 1	Final Pre-Trial Conference	Held as Scheduled	Unassigned
03/31/2017	Criminal 1 - Ct. Rm. 1	Jury Trial	Rescheduled	Unassigned
04/03/2017	CR Session 3 - Ct. Rm 5	Jury Trial	Held as Scheduled	Agostini
04/03/2017	CR Session 3 - Ct. Rm 5	Hearing on Motion(s) in Limine	Held as Scheduled	Agostini
04/04/2017	CR Session 3 - Ct. Rm 5	Jury Trial	Held as Scheduled	Agostini
04/05/2017	CR Session 3 - Ct. Rm 5	Jury Trial	Held as Scheduled	Agostini
04/07/2017	CR Session 3 - Ct. Rm 5	Jury Trial	Held as Scheduled	Agostini
04/10/2017	CR Session 3 - Ct. Rm 5	Jury Trial	Held as Scheduled	Agostini
04/11/2017	CR Session 3 - Ct. Rm 5	Jury Trial	Held as Scheduled	Agostini
04/12/2017	CR Session 3 - Ct. Rm 5	Jury Trial	Held as Scheduled	Agostini
04/13/2017	CR Session 3 - Ct. Rm 5	Jury Trial	Canceled	Agostini
04/19/2017	CR Session 3 - Ct. Rm 5	Hearing for Sentence Imposition	Held as Scheduled	Agostini

FINANCIAL DETAILS

Date	Fees/Fines/Costs/Charge	Assessed	Paid	Dismissed	Balance
04/23/2015	Legal counsel fee assessed in the amount of \$150.00 (Richard Carey, Justice)	0.00	0.00	0.00	0.00
09/21/2016	Fee for unattested copy of court documents, records, papers, G.L. c. 262 § 4b. Receipt: 8747 Date: 09/21/2016	5.00	5.00	0.00	0.00
Total		5.00	5.00	0.00	0.00



**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY
Public Docket Report**

INFORMATIONAL DOCKET ENTRIES			
Date	Ref	Description	Judge
03/30/2015	1	Indictment returned	
03/30/2015	2	Order of notice of finding of murder indictment	
04/09/2015		Habed for arraignment issued ret date 4/23/15	
04/23/2015		Deft arraigned before Court	
04/23/2015		Appointment of Counsel David Rountree, pursuant to Rule 53	
04/23/2015	3	Appearance of Deft's Atty: David Rountree	
04/23/2015		Count One read in Open Court (Carey,J.)	
04/23/2015		Deft waives reading of indictment's 2 & 3	
04/23/2015		RE Offense 1:Plea of not guilty	
04/23/2015		RE Offense 2:Plea of not guilty	
04/23/2015		RE Offense 3:Plea of not guilty	
04/23/2015		Bail set at \$0.00 Surety, \$0.00 Cash. Next Date:8/13/15	Carey
04/23/2015	4	ExParte MOTION by Deft: for Funds for Investigator	
04/23/2015		MOTION (P#4) allowed (Richard Carey, Justice)	
04/23/2015	5	MOTION by Deft: to Preserve Evidence	
04/23/2015		MOTION (P#5) allowed by agreement (Richard Carey, Justice)	
04/23/2015	6	Bail: mittimus issued	
04/23/2015		Assigned to track "C" see scheduling order	
04/23/2015		Tracking deadlines Active since return date	
08/13/2015		Event Result: The following event: Pre-Trial Hearing scheduled for 08/13/2015 09:19 AM has been resulted as follows: Result: Held as Scheduled Appeared:	Rup
08/13/2015	7	Pre-trial conference report filed	
08/13/2015	8	The defendant is committed without bail for the following reason: Defendant is charged with 1st degree murder. Next date: 2/24/16	Rup
11/18/2015	9	Defendant 's Motion for notice of expert testimony	
11/18/2015	10	Defendant 's Motion for disclosure of prior and subsequent bad acts	
11/18/2015	11	Defendant 's Motion for discovery of ballistics testing bench notes, photographs and diagrams	
11/18/2015	12	Defendant 's Motion for discovery of the results of scientific tests	
11/18/2015	13	Defendant 's Motion for criminal records of potential witnesses and victim	
11/18/2015	14	Defendant 's Motion for discovery of police reports, police notes, tapes and photos	
11/18/2015	15	Defendant 's Motion to inspect physical evidence	



**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY
Public Docket Report**

11/18/2015	16	Defendant 's Motion for disclosure of rewards, promises and inducements	
11/18/2015	17	Defendant 's Motion to suppress identifications	
11/18/2015	17.1	Affidavit filed by Defendant Michael Rodriguez in support of motion to suppress identifications	
11/18/2015	18	Michael Rodriguez's Memorandum in support of motion to suppress identification	
12/14/2015	19	Defendant 's Motion to continue evidentiary motion hearing	
12/16/2015		Event Result: The following event: Hearing on Motion to Continue scheduled for 12/16/2015 09:23 AM has been resulted as follows: Result: Held as Scheduled	Mason
12/16/2015		Event Result: The following event: Evidentiary Hearing on Suppression scheduled for 12/16/2015 09:15 AM has been resulted as follows: Result: Not Held Reason: Request of Defendant	Mason
12/16/2015		Event Result: The following event: Jury Trial scheduled for 02/24/2016 09:07 AM has been resulted as follows: Result: Not Held Reason: Request of Defendant	Mason
12/16/2015		Event Result: The following event: Final Pre-Trial Conference scheduled for 02/09/2016 09:39 AM has been resulted as follows: Result: Not Held Reason: Request of Defendant	Mason
12/16/2015	20	Defendant 's Motion to continue Trial date	
12/16/2015	21	Defendant 's EX PARTE Motion for funds (forensic pathologist)	
12/16/2015	21.1	Affidavit filed by Defendant Michael Rodriguez in support of ex-parte motion for funds for expert pathologist	
12/16/2015	22	Defendant 's EX PARTE Motion for funds for ballistics expert	
12/16/2015	22.1	Affidavit filed by Defendant Michael Rodriguez in support of ex-parte motion for funds for ballistics expert	
12/16/2015		Endorsement on Motion for disclosure of prior and subsequent bad acts, (#10.0): ALLOWED	Mason
12/16/2015		Endorsement on Motion for discovery of ballistics testing bench notes, photographs and diagrams, (#11.0): ALLOWED	Mason
12/16/2015		Endorsement on Motion for discovery of the results of scientific tests, (#12.0): ALLOWED	Mason
12/16/2015		Endorsement on Motion for criminal records of potential witnesses and victim, (#13.0): ALLOWED	Mason
12/16/2015		Endorsement on Motion for discovery of police reports, police notes, tapes and photos, (#14.0): ALLOWED	Mason
12/16/2015		Endorsement on Motion to inspect physical evidence, (#15.0): ALLOWED	Mason



**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY
Public Docket Report**

12/16/2015		Endorsement on Motion for disclosure of rewards, promises and inducements, (#16.0): ALLOWED	Mason
12/16/2015		Endorsement on Motion to continue evidentiary motion hearing, (#19.0): ALLOWED	Mason
12/16/2015		Endorsement on Motion to continue Trial date, (#20.0): ALLOWED	Mason
12/16/2015		Endorsement on Motion for funds (forensic pathologist), (#21.0): ALLOWED	Mason
12/16/2015		Endorsement on Motion for funds for ballistics expert, (#22.0): ALLOWED	Mason
02/24/2016	23	List of exhibits MTS in counter	
02/24/2016		Event Result: The following event: Evidentiary Hearing on Suppression scheduled for 02/24/2016 09:15 AM has been resulted as follows: Result: Held as Scheduled	Sweeney
02/24/2016		The defendant is committed without bail for the following reason: Defendant is charged with 1st degree murder. Next Date: 3/3/16	Sweeney
03/03/2016		Event Result: The following event: Evidentiary Hearing on Suppression scheduled for 03/03/2016 09:15 AM has been resulted as follows: Result: Not Held Reason: Joint request of parties	Sweeney
03/03/2016		The defendant is committed without bail for the following reason: Defendant is charged with 1st degree murder. Next Date: 03/22/2016	Sweeney
03/11/2016		General correspondence regarding Certified copy of Mtn. for funds for Lewis Gordon	
03/22/2016		Matter taken under advisement The following event: Evidentiary Hearing on Suppression scheduled for 03/22/2016 09:00 AM has been resulted as follows: Result: Held - Under advisement: Parties have until 4/15/16 to file supporting memos.	Sweeney
03/22/2016		The defendant is committed without bail for the following reason: Defendant is charged with 1st degree murder. Next Date: 4/21/16	Sweeney
03/22/2016		Issued on this date: Mittimus Without Bail Sent On: 03/22/2016 11:40:22	
03/22/2016	24	List of exhibits MTS Evidentiary Hearing in counter	
04/01/2016	25	Defendant's Joint Motion to continue trial date	
04/07/2016		Event Result: The following event: Hearing on Motion to Continue scheduled for 04/07/2016 09:23 AM has been resulted as follows: Result: Held as Scheduled	Agostini
04/07/2016		Endorsement on Motion to continue trial date (joint), (#25.0): ALLOWED	Agostini



**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY
Public Docket Report**

04/07/2016		Event Result: The following event: Final Pre-Trial Conference scheduled for 04/21/2016 09:39 AM has been resulted as follows: Result: Not Held Reason: Joint request of parties	Agostini
04/07/2016		Event Result: The following event: Jury Trial scheduled for 05/09/2016 09:07 AM has been resulted as follows: Result: Not Held Reason: Joint request of parties	Agostini
04/07/2016		The defendant is committed without bail for the following reason: Defendant is charged with 1st degree murder. next date: 9/13/16	Agostini
04/07/2016		Issued on this date: Mittimus Without Bail Sent On: 04/07/2016 11:06:55	
04/15/2016	26	Michael Rodriguez's Memorandum in support of motion to suppress identifications	
04/15/2016	27	Commonwealth's Memorandum in opposition to the defendant's motion to suppress identification	
06/02/2016	28	Defendant 's EX PARTE Motion for funds for video expert	
06/06/2016		Event Result: The following event: Hearing for Funds scheduled for 06/06/2016 09:37 AM has been resulted as follows: Result: Held as Scheduled	Page
07/15/2016		Endorsement on Motion for funds for video expert (ex-parte), (#28.0): ALLOWED	Sweeney
08/24/2016	29	Defendant 's Motion for out of state criminal records of potential witnesses and victim	
08/29/2016	30	Commonwealth 's Motion for jail recordings	
08/29/2016	30.1	Affidavit of in support of Commonwealth's motion for jail records	
09/01/2016		Endorsement on Motion for jail recordings, (#30.0): ALLOWED without objection	Mason
09/01/2016		Endorsement on Motion for out of state criminal records of potential witnesses and victim, (#29.0): ALLOWED	Mason
09/01/2016		Event Result: The following event: Motion Hearing scheduled for 09/01/2016 09:23 AM has been resulted as follows: Result: Held as Scheduled	Mason
09/13/2016		Event Result: The following event: Final Pre-Trial Conference scheduled for 09/13/2016 09:39 AM has been resulted as follows: Result: Not Held Reason: Joint request of parties	Carey



**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY
Public Docket Report**

09/13/2016		Event Result: The following event: Jury Trial scheduled for 10/06/2016 09:07 AM has been resulted as follows: Result: Not Held Reason: Joint request of parties	Carey
09/13/2016	31	Defendant 's EX PARTE Motion for Funds for Translation and Transcription	
09/13/2016		Endorsement on Motion of Funds for Translation and Transcription, (#31.0): ALLOWED	Carey
09/13/2016	32	Defendant 's Joint Motion to Continue Trial Date	
09/13/2016		Endorsement on Motion to Continue Trial date, (#32.0): ALLOWED	Carey
09/15/2016		Other Records received from Hampden County Sheriffs Department	
12/14/2016	33	Defendant 's Motion for issuance of Third Party subpoena pursuant to Rule 17 (Bank records of Jacinda Mattias)	
12/14/2016	33.1	Affidavit filed by Defendant Michael Rodriguez in support of Rule 17 motion for bank records	
12/19/2016	34	MEMORANDUM & ORDER: Memorandum of decision and orders RE: Defendants motion to suppress	Sweeney
12/20/2016		Event Result: The following event: Motion Hearing scheduled for 12/20/2016 09:23 AM has been resulted as follows: Result: Held as Scheduled	Sweeney
12/20/2016		Endorsement on Motion for Issuance of third party subpoena pursuant to Rule 17 (Bank Records of Jacinda Mattias), (#33.0): ALLOWED probable evidence is established protector order that the records not be dismissed rule 17 subpoena shall issue as requested	Sweeney
12/20/2016		The defendant\petitioner is committed without bail for the following reason: Is charged with 1st degree murder.	McDonough
12/20/2016	35	Commonwealth, Defendant 's Joint Motion to continue trial	
12/20/2016		Endorsement on Motion to continue trial (joint), (#35.0): ALLOWED for the reason stated	McDonough
12/20/2016	36	Commonwealth 's Motion for reciprocal discovery	McDonough
12/20/2016		Endorsement on Motion for reciprocal discovery, (#36.0): ALLOWED by agreement	McDonough
12/29/2016	37	List of exhibits	
01/04/2017		Event Result: The following event: Final Pre-Trial Conference scheduled for 01/04/2017 09:39 AM has been resulted as follows: Result: Not Held Reason: Joint request of parties	McDonough
01/04/2017		Event Result: The following event: Jury Trial scheduled for 01/18/2017 09:07 AM has been resulted as follows: Result: Not Held Reason: Joint request of parties	McDonough



**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY
Public Docket Report**

02/07/2017	38	Defendant 's EX PARTE Motion for funds (Combat Psychologist)	
02/07/2017	38.1	Affidavit filed by Defendant Michael Rodriguez in support of ex-parte motion for funds for expert Psychologist	
02/15/2017		Event Result: The following event: Hearing for Funds scheduled for 02/15/2017 09:37 AM has been resulted as follows: Result: Held as Scheduled	Sweeney
02/17/2017		Endorsement on Motion for funds (Combat Psychologist), (#38.0): ALLOWED	Sweeney
03/07/2017	39	Defendant 's Motion to Release Spent Projectiles and Shell Casings for Further Scientific Testing	
03/07/2017	39.1	Affidavit filed by Defendant Michael Rodriguez in support of Motion to Release Spent Projectiles for further Scientific Testing	
03/07/2017	40	Defendant 's Motion to Compel Discovery of Working Video from Mass Mutual Security Cameras	
03/07/2017	41	Defendant 's Motion for discovery of Specific Compensation Provided to Potential Cooperating Witness	
03/15/2017		Event Result: The following event: Final Pre-Trial Conference scheduled for 03/15/2017 09:39 AM has been resulted as follows: Result: Not Held Reason: Joint request of parties	Unassigned
03/15/2017		Event Result: The following event: Motion Hearing scheduled for 03/15/2017 09:21 AM has been resulted as follows: Result: Not Held Reason: Transferred to another session	Unassigned
03/15/2017		Event Result: The following event: Motion Hearing scheduled for 03/15/2017 09:23 AM has been resulted as follows: Result: Held as Scheduled	Carey
03/15/2017		Endorsement on Motion to release spend projectiles and shell casings for further scientific testing, (#39.0): ALLOWED	Carey
03/15/2017	42	Commonwealth 's Motion to compel discovery	
03/15/2017		Endorsement on Motion to compel discovery, (#42.0): ALLOWED Compliance by 3/24/17 by agreement	Carey
03/16/2017	43	Commonwealth 's Motion for medical records of victim	
03/17/2017		Endorsement on Motion for medical records of victim, (#43.0): ALLOWED	Carey
03/17/2017	44	Order for Production of Records issued to Keeper of Records American Medical Response of to be returned to court by 03/28/2017 This order does not authorize the release of psychiatric or mental health records	Carey
03/24/2017		Event Result: The following event: Final Pre-Trial Conference scheduled for 03/24/2017 09:39 AM has been resulted as follows: Result: Held as Scheduled	Unassigned



**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY
Public Docket Report**

03/24/2017		Event Result: The following event: Trial Assignment Conference scheduled for 03/24/2017 09:09 AM has been resulted as follows: Result: Held as Scheduled	Unassigned
03/24/2017	45	Pre-trial conference report filed	
		Final	
03/24/2017	46	Defendant 's EMERGENCY Motion for funds for Gunshot Residue Expert	
03/24/2017		Endorsement on Motion for funds for Gunshot Residue Expert, (#46.0): ALLOWED	Unassigned
03/24/2017		Event Result: The following event: Jury Trial scheduled for 03/31/2017 09:07 AM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date	Unassigned
03/24/2017		Attorney appearance On this date Melissa G. Doran, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Commonwealth	
03/24/2017	47	Attorney appearance On this date Kelsey A. Baran, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth	
03/30/2017	48	Commonwealth 's Motion in limine to Admit Jail Calls as Evidence of Consciousness of Guilt	
03/30/2017	49	Commonwealth 's Motion in limine to Exclude Testimony of Defense's Expert Witness	
03/30/2017	50	Commonwealth 's Motion in limine to Request a Jury Instruction on Felony-murder in the Second Degree	
03/30/2017	51	Commonwealth Commonwealth's proposed juror Voir Dire questions filed. for Attorney Conducted Voir Dire	
03/30/2017	52	Commonwealth 's Motion in limine to Admit Photo of Julian Cartie in Life	
03/30/2017	54	Defendant 's Motion in limine regarding Prior Convictions	
03/30/2017	53	Commonwealth 's Motion to Introduce In-court Identification of the Defendant	
03/30/2017	55	Defendant 's Motion in limine to Preclude Jail Calls	
03/30/2017	56	Defendant 's Motion in limine regarding Expert Testimony Regarding Combat Psychology	
03/30/2017	57	Defendant 's Motion in limine to Preclude Inadmissible and Highly Prejudicial Hearsay Evidence Proffered Through Jose Rodriguez	
03/30/2017	58	Defendant 's Motion in limine regarding Preclusion of "Text-A-Tip" Information	
03/30/2017	59	Defendant 's Motion in limine regarding Subsequent Bad Acts	
03/30/2017	60	Defendant 's Motion in limine regarding Preclusion of Graphic Photographs	
03/30/2017	61	Defendant 's Motion to Appoint Counsel for Witness Magdiel Cortes	



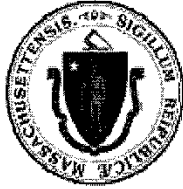
**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY
Public Docket Report**

03/30/2017	61.1	Affidavit of David Rountree, in Support of Motion to Appoint Counsel for Witness Magdiel Cortes	
03/30/2017	62	Defendant 's Motion to Appoint Counsel for Witness Angelo Delgado	
03/30/2017	62.1	Affidavit of David Rountree, in Support of Motion to Appoint Counsel for Witness Angelo Delgado	
03/30/2017	63	Interpreter requested.	Agostini
		For 4/3/17, Courtroom #7	
04/03/2017		Event Result: The following event: Hearing on Motion(s) in Limine scheduled for 04/03/2017 09:00 AM has been resulted as follows: Result: Held as Scheduled	Agostini
04/03/2017		Endorsement on Motion in limine to preclude jail calls, (#55.0): DENIED	Agostini
04/03/2017		Event Result: The following event: Jury Trial scheduled for 04/03/2017 09:00 AM has been resulted as follows: Result: Held as Scheduled	Agostini
04/03/2017		The defendant\petitioner is committed without bail for the following reason: Is charged with 1st degree murder. Next date: 4/6/17	Agostini
04/03/2017	66	Commonwealth 's Motion to allow testimony of proffer letter	
04/03/2017		Endorsement on Motion to allow testimony of proffer letter, (#66.0): ALLOWED with respect to the substance of the agreement between Matias and to District Attorney's office, however, the letter, itself, does not come into evidence.	Agostini
04/03/2017	66.1	Commonwealth, Defendant 's Stipulation of the parties	
04/03/2017		Endorsement on Motion in limine to admit jail calls as evidence of consciousness of guilt, (#48.0): ALLOWED	Agostini
04/03/2017		Endorsement on Motion in limine to admit photo of Julian Cartie in life, (#52.0): ALLOWED	Agostini
04/03/2017		Endorsement on Motion to introduce in-court identification of the defendant, (#53.0): ALLOWED	Agostini
04/03/2017		Endorsement on Motion in limine regarding Prior Convictions, (#54.0): Other action taken ALLOWED as to firearm charge; DENIED as to drug charge	Agostini
04/03/2017		Endorsement on Motion in limine regarding preclusion of "Text-A-Tip" information, (#58.0): Other action taken ALLOWED, except tot he extent that an anonymous "tip" was provided tot he police that resulted in the police contacting Jacinda Mattias during the investigation.	Agostini



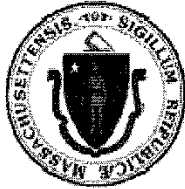
**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY
Public Docket Report**

04/03/2017	Endorsement on Motion in limine regarding subsequent bad acts, (#59.0): Other action taken ALLOWED as to the conviction and possession of the .45 caliber weapon, the 9mm weapon and the .38 caliber pistol, as well as the conviction of possession with intent to distribute. DENIED, regarding the fact that the defendant was Jose Rodriguez's "drug dealer" as this is being used not as a bad act but for identification and relationship with the defendant. A curative distinction will be provided to the jury regarding the purpose of such evidence.	Agostini
04/03/2017	Endorsement on Motion in limine regarding preclusion of graphic photographer, (#60.0): DENIED	Agostini
04/03/2017	Endorsement on Motion to appoint counsel for witness Magdiel Cortes, (#61.0): DENIED	Agostini
04/03/2017	Endorsement on Motion to appoint counsel for witness Angelo Delgado, (#62.0): DENIED	Agostini
04/04/2017	Event Result: The following event: Jury Trial scheduled for 04/04/2017 09:00 AM has been resulted as follows: Result: Held as Scheduled	Agostini
04/04/2017	The defendant\petitioner is committed without bail for the following reason: Is charged with 1st degree murder. Next date: 4/7/17	Agostini
04/05/2017	Event Result: The following event: Jury Trial scheduled for 04/05/2017 09:00 AM has been resulted as follows: Result: Held as Scheduled	Agostini
04/05/2017	Interpreter requested. Applies To: Rodriguez, Michael (Defendant); Cortez, Magdiel (Witness)	
04/07/2017	Event Result: The following event: Jury Trial scheduled for 04/07/2017 09:00 AM has been resulted as follows: Result: Held as Scheduled	Agostini
04/07/2017	The defendant\petitioner is committed without bail for the following reason: Is charged with 1st degree murder. Next date: 4/10/17	Agostini
04/10/2017	Event Result: The following event: Jury Trial scheduled for 04/10/2017 09:00 AM has been resulted as follows: Result: Held as Scheduled	Agostini
04/10/2017	The defendant\petitioner is committed without bail for the following reason: Is charged with 1st degree murder. Next Date: 04/11/17	Agostini
04/11/2017	Event Result: The following event: Jury Trial scheduled for 04/11/2017 09:00 AM has been resulted as follows: Result: Held as Scheduled	Agostini
04/11/2017	64 Interpreter requested.	
04/11/2017	The defendant\petitioner is committed without bail for the following reason: Is charged with 1st degree murder. next date: 4/19/2017	Agostini
04/11/2017	67 Defendant's Motion for required finding of not guilty	



**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY
Public Docket Report**

04/11/2017		Endorsement on Motion for required finding of not guilty, (#67.0): DENIED Except for the second degree, Felony Murder theory	Agostini
04/12/2017		Event Result: The following event: Jury Trial scheduled for 04/12/2017 09:00 AM has been resulted as follows: Result: Held as Scheduled	Agostini
04/12/2017		Event Result: The following event: Jury Trial scheduled for 04/13/2017 09:00 AM has been resulted as follows: Result: Not Held Reason: By Court prior to date	Agostini
04/12/2017	68	List of jurors filed.	
04/12/2017	69	Verdict affirmed, verdict slip filed	
		Guilty of Second Degree murder Guilty firearms charge	
04/13/2017		Event Result: The following event: Jury Trial scheduled for 04/13/2017 09:07 AM has been resulted as follows: Result: Canceled Reason: Case Disposed	Agostini
04/13/2017		Disposed for statistical purposes	
04/14/2017	65	Defendant 's Motion for funds for Ballistics Expert	
04/17/2017		Endorsement on Supplemental Motion for funds for ballistics expert (ex-parte), (#65.0): ALLOWED	Agostini
04/19/2017		Event Result: The following event: Hearing for Sentence Imposition scheduled for 04/19/2017 09:00 AM has been resulted as follows: Result: Held as Scheduled	Agostini
04/19/2017		Offense Disposition:: Charge #2 FIREARM WITHOUT FID CARD, POSSESS c269 s.10(h) On: 04/13/2017 Judge: Hon. John A Agostini By: Jury Trial Guilty Verdict Charge #3 MACHINE GUN, POSSESS c269 §10(c) On: 04/13/2017 Judge: Hon. John A Agostini By: Jury Trial Guilty Verdict	
04/19/2017		Offense Disposition:: Charge #1 MURDER c265 §1 On: 04/19/2017 Judge: Hon. John A Agostini By: Jury Trial Guilty Verdict - Lesser Included Charge #2 FIREARM WITHOUT FID CARD, POSSESS c269 s.10(h) On: 04/13/2017 Judge: Hon. John A Agostini By: Jury Trial Guilty Verdict Charge #3 MACHINE GUN, POSSESS c269 §10(c) On: 04/13/2017 By: Jury Trial Guilty Verdict	



**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY
Public Docket Report**

04/19/2017	71	Issued on this date: Mitt For Sentence (First 6 charges) Sent On: 04/20/2017 09:32:03
04/19/2017		Correction Date: 04/19/2017 Judge: Hon. John A Agostini Charge #: 1 MURDER c265 §1 Life with Parole Not Less Than: 15 Years, 0 Months, 0 Days Charge #: 2 FIREARM WITHOUT FID CARD, POSSESS c269 s.10(h) State Prison Sentence Not Less Than: 2 Years, 0 Months, 0 Days Not More Than: 5 Years, 0 Months, 0 Days Served Consecutively Charge # 1 Charge #: 3 MACHINE GUN, POSSESS c269 §10(c) Committed to HOC Term: 2 Years, 6 Months, 0 Days To Serve: 2 Years, 6 Months, 0 Days Served Consecutively Charge # 2 Committed to MCI - Cedar Junction (at Walpole) Credits 783 Days Further Orders of the Court: Days credit by agreement and order of the court
04/19/2017	70	Issued on this date: Mitt For Sentence (First 6 charges) Sent On: 04/19/2017 13:22:11
04/19/2017		Defendant warned as to submission of DNA G.L. c. 22E, § 3 Agostini
04/19/2017		DNA fee WAIVED Agostini
04/19/2017		After finding of severe financial hardship, victim/witness fee waived. Agostini
04/19/2017		Drug Analysis fee waived due to severe financial hardship. Agostini
04/19/2017		Defendant notified of right of appeal to the Appellate Division of the Superior Court within ten (10) days. Agostini
04/19/2017		Defendant notified of right of appeal to the Appeals Court within thirty (30) days. Agostini
04/19/2017	72	Defendant 's Motion to Withdraw Appearance N. 4/24/17 (Agostini,J)
04/19/2017	73	Defendant 's Motion to Appoint Appellate Counsel N. 4/24/17 (Agostini,J)
04/19/2017	74	Notice of appeal filed. Applies To: Rodriguez, Michael (Defendant)
04/19/2017	75	Notice of appeal from sentence to MCI - Cedar Junction (at Walpole) filed by defendant
04/19/2017		Notification to the Appellate Division sent.
04/25/2017	76	Issued on this date: Mitt For Sentence (First 6 charges) Sent On: 04/25/2017 15:00:16



**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY
Public Docket Report**

04/25/2017	77	Notice of appeal from sentence to MCI - Cedar Junction (at Walpole) filed by defendant (2nd Sentence Appeal filed)	
04/25/2017		Notification to the Appellate Division sent.	
07/03/2017	78	Court Reporter Amy Foulks is hereby notified to prepare one copy of the transcript of the evidence of 02/24/2016 09:07 AM Jury Trial	
07/03/2017	79	Court Reporter Christie Aarons is hereby notified to prepare one copy of the transcript of the evidence of 03/03/2016 09:15 AM Evidentiary Hearing on Suppression	
07/03/2017	80	Court Reporter Sara Adams is hereby notified to prepare one copy of the transcript of the evidence of 03/22/2016 09:00 AM Evidentiary Hearing on Suppression, 04/03/2017 09:00 AM Hearing on Motion(s) in Limine, 04/04/2017 09:00 AM Jury Trial, 04/05/2017 09:00 AM Jury Trial, 04/07/2017 09:00 AM Jury Trial, 04/10/2017 09:00 AM Jury Trial, 04/11/2017 09:00 AM Jury Trial, 04/12/2017 09:00 AM Jury Trial, 04/19/2017 09:00 AM Hearing for Sentence Imposition	
07/26/2017		CD of Transcript of 02/24/2016 09:15 AM Evidentiary Hearing on Suppression received from Amy Foulks Transcribed by: Barbara A. Reardon, CET/ACT.	
08/15/2017	81	List of exhibits Trial & ID in Basement Vault	
10/30/2017		Endorsement on Motion to withdraw appearance, (#72.0): ALLOWED Nunc pro tunc Judge: Ricciardone, Hon. David	Ricciardone
10/30/2017		Endorsement on Motion to Appoint Appellate Counsel, (#73.0): ALLOWED Nunc pro tunc Judge: Ricciardone, Hon. David	Ricciardone
11/06/2017		Attorney appearance On this date David J M Rountree, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Michael Rodriguez	
11/06/2017	82	Attorney appearance On this date Neil L Fishman, Esq. added as Appointed - Appellate Action for Defendant Michael Rodriguez- appearance filed 11/14/17	
11/08/2017		CD of Transcript of 03/03/2016 09:15 AM Evidentiary Hearing on Suppression received from Christie Aarons.	
11/28/2017		CD of Transcript of 03/22/2016 09:00 AM Evidentiary Hearing on Suppression, 04/03/2017 09:00 AM Jury Trial, 04/04/2017 09:00 AM Jury Trial, 04/05/2017 09:00 AM Jury Trial, 04/07/2017 09:00 AM Jury Trial, 04/10/2017 09:00 AM Jury Trial, 04/11/2017 09:00 AM Jury Trial, 04/12/2017 09:00 AM Jury Trial, 04/19/2017 09:00 AM Hearing for Sentence Imposition received from Sara Adams.	
12/27/2017		Attorney appearance On this date Kelsey A Baran, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Commonwealth	



**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY
Public Docket Report**

12/27/2017		Attorney appearance On this date Melissa G Doran, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Commonwealth
12/27/2017		Attorney appearance On this date Katherine E McMahon, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth
12/28/2017	83	Appeal: notice of assembly of record sent to Counsel Applies To: Rodriguez, Michael (Defendant); McMahon, Esq., Katherine E (Attorney) on behalf of Commonwealth (Prosecutor); Fishman, Esq., Neil L (Attorney) on behalf of Rodriguez, Michael (Defendant)
12/28/2017	84	Appeal: Statement of the Case on Appeal (Cover Sheet). Applies To: Rodriguez, Michael (Defendant); McMahon, Esq., Katherine E (Attorney) on behalf of Commonwealth (Prosecutor); Fishman, Esq., Neil L (Attorney) on behalf of Rodriguez, Michael (Defendant)
01/09/2018	85	Notice of Entry of appeal received from the Appeals Court
01/16/2018		Appeal for review of sentence entered at the Appellate Division: Originating Court: Hampden County Receiving Court: Suffolk County Criminal Case Number: 1784AD180-HD ;
05/21/2018	86	Notice of docket entry received from Appeals Court RE: #8: Appellate proceedings STAYED to 06/29/2018. Status report due 06/29/2018 concerning the drafting and filing of the motion to reduce the verdict. "Notice Attest.
06/22/2018	87	Order from Appellate Division of the Superior Court for the Review of Sentence it is ORDERED: ORDERED: that the judgments imposing said sentences stand and that said appeal be and is hereby dismissed.
09/25/2018	88	Defendant 's Motion to reduce verdict pursuant to Rule 25(B)(2)
09/25/2018	88.1	Affidavit of Neil L. Fishman in support of motion to reduce verdict
09/25/2018	89	Michael Rodriguez's Memorandum of law in support of motion to reduce the verdict
10/01/2018	90	Notice of docket entry received from Appeals Court RE#12: Appellate proceedings stayed to 10/26/18. Status report due then concerning trial court's disposition of pending motion to reduce the verdict. *Notice/Attest
10/09/2018	91	ORDER: Regarding Scheduling Order N. 10/10/18 N. Fishman (Mailed) , Agostini Esquire & K. McMahon, ADA Inter-office mail Judge: Agostini, Hon. John A
11/13/2018		Docket Note: # 67, ,74,88,88.1, 89 made for ADA Melissa Doran
11/15/2018	92	Opposition to defendant's motion to reduce verdict pursuant to Rule 25 (b) (2) filed by Commonwealth notified Judge Agostini 11/16



**COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY
Public Docket Report**

11/30/2018	93	Notice of docket entry received from Appeals Court RE#14: Appellate proceedings stayed to 1/3/19. Status report due then concerning trial court's disposition of pending motion to reduce the verdict following the filing of the Commonwealth's response on 11/15/18. *Notice/Attest	
01/28/2019	94	Notice of docket entry received from Appeals Court RE#14: Appellate proceedings stayed to 02/22/19. Status report due then concerning trial court's disposition of pending motion to reduce the verdict following the filing of the Commonwealth's response on 11/15/18. *Notice/Attest	
02/13/2019		Endorsement on Defendant 's Motion to reduce verdict pursuant to Rule 25(B)(2), (#88.0): DENIED See Memo and Order this date. n. by email	Agostini
02/13/2019	95	MEMORANDUM & ORDER: on Defendant's Motion to Reduce Verdict (Pl #88) Judge: Agostini, Hon. John A	Agostini
04/11/2019	96	Defendant 's Notice of appeal	
04/11/2019	97	Defendant 's Assented to Motion to filed late notice of appeal	
04/11/2019	97.1	Affidavit of Neil L. Fishman in support of assented-to motion to allow for late filing of notice of appeal	
04/17/2019		Endorsement on Motion to file late notice of appeal, (#97.0): ALLOWED	Agostini
04/23/2019	98	Notice of assembly of record sent to Counsel Applies To: Commonwealth (Prosecutor); Rodriguez, Michael (Defendant); McMahon, Esq., Katherine E (Attorney) on behalf of Commonwealth (Prosecutor); Fishman, Esq., Neil L (Attorney) on behalf of Rodriguez, Michael (Defendant)	
04/23/2019	99	Appeal: Statement of the Case on Appeal (Cover Sheet). Applies To: Commonwealth (Prosecutor); Rodriguez, Michael (Defendant); McMahon, Esq., Katherine E (Attorney) on behalf of Commonwealth (Prosecutor); Fishman, Esq., Neil L (Attorney) on behalf of Rodriguez, Michael (Defendant)	
04/29/2019	100	Notice of Entry of appeal received from the Appeals Court	
05/06/2019	101	Notice of docket entry received from Appeals Court	

09:28:56

1

Volume: III

2

Pages: 249

Exhibits: 1-14

3

4

COMMONWEALTH OF MASSACHUSETTS
HAMPDEN, SS. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

5

6

* * * * *

7

COMMONWEALTH OF MASSACHUSETTS

8

v.

* Docket No. 15-288

9

MICHAEL RODRIGUEZ

10

* * * * *

11

12

JURY TRIAL
BEFORE THE HONORABLE JOHN AGOSTINI

13

14

APPEARANCES:

15

For the Commonwealth:

16

Hampden County District Attorney's Office
50 State Street

17

Springfield, Massachusetts 01103

18

By: Melissa Doran, Assistant District Attorney

19

For the Defendant Rodriguez

20

By: David Rountree, Esquire

21

22

Springfield, Massachusetts
Courtroom 7
April 4, 2017

23

24

Sara E. Adams
Official Court Reporter

25

09:39:44 1 a photograph of Julian Cartie in life is allowed.

09:39:49 2 Motion in limine preclusion of graphic --
09:39:53 3 defendant's motion in limine to preclusion of graphic
09:39:56 4 photographs, that is denied.

09:39:58 5 The defendant's motion to appoint counsel
09:40:00 6 for witness Angelo Delgado is denied.

09:40:04 7 Commonwealth's motion to limit the excluded
09:40:09 8 testimony of defense expert, a Lanigan hearing will be
09:40:13 9 held prior to the defendant's presentation of evidence
09:40:16 10 with respect to Dr. Ziegler's opinion, particularly the
09:40:19 11 conclusion that training by the United States Armed
09:40:22 12 Forces increases the risk of a person's willingness to
09:40:26 13 engage in physical combat.

09:40:38 14 The only other motion, and I wasn't clear
09:40:39 15 what -- I assume this comes from oral testimony, but
09:40:41 16 that's defendant's motion in limine to preclude
09:40:44 17 admissions and highly prejudicial hearsay offered
09:40:46 18 through Jose Rodriguez. We'll have to deal with what
09:40:50 19 hearsay comes up because I didn't remember any that we
20 discussed.

09:40:57 21 I will allow the statement where the racial
09:40:58 22 epithet came in. I'm going to allow that for the
09:41:01 23 Commonwealth. There may be other issues that we're going
09:41:03 24 to have to wind our way through at that time.

09:41:06 25 MR. ROUNTREE: Please note my exceptions for the