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S.J.C. No. FAR-30524

Commonwealth of Massachusetts

Supreme Judicial Court

COMMONWEALTH

vs.

NEIL E. TOM, JR.

ON APPEAL FROM THE DORCHESTER DIVISION OF THE
BOSTON MUNICIPAL COURT

APPLICATION FOR FURTHER APPELLATE REVIEW

REBECCA KILEY
BBO #660742

ATTORNEY FOR NEIL E. TOM, JR.

COMMITTEE FOR PUBLIC COUNSEL SERVICES
Public Defender Division
75 Federal Street, Sixth Floor
Boston, Massachusetts 02110
(617) 482-6212
rkiley@publiccounsel.net

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REQUEST FOR FURTHER APPELLATE REVIEW

In *Commonwealth v. Long*, 485 Mass. 711, 718 (2020), this Court acknowl-edged the "great harm" of racially discriminatory policing, and tried to address it by lowering the burden of proof on defendants raising equal protection claims and holding that the Commonwealth's rebuttal burden requires it to "grapple with *all* of the reasonable inferences and *all* of the evidence that a defendant presented . . . to prove that the stop was not racially motivated." *Id.* at 718, 726 (emphasis added).

The question presented by this case is whether the *Long* remedy will prove to be as illusory as the *Lora*[1] standard it supplanted. The defense in this case set forth a serious and sophisticated statistical presentation that raised a strong infer-ence of racial profiling in traffic stops by the police officer who stopped Mr. Tom, a Black man. The officer made far more stops of Black people than would be pre-dicted based on an expected stop rate derived from demographic data, and was far more likely to stop Black people than his fellow officers working in the same Bos-ton police area. Nothing about the circumstances of the stop—made by officers assigned to a rapid response car primarily designated for violent crimes, purport-edly because the car Mr. Tom drove had no front license plate—rebutted the strong inference of discrimination raised by the statistical analysis. Nor did the Commonwealth offer its own statistical analysis.

But the motion judge concluded that the Commonwealth had satisfied its rebuttal burden simply by poking theoretical holes in the defense case, pointing to possible variables that the Commonwealth speculated—but did not prove— might make a difference if accounted for. The judge's reasoning was marred by factual errors and legal conclusions that directly contradict this Court's decision in *Long*. Among other things, the judge criticized the defense expert for:

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[1] *Commonwealth v. Lora*, 421 Mass. 425 (2008).

- purportedly relying on a Boston-wide benchmark rather than a neighborhood-specific one, when the expert in fact used data specific to Boston Police Area B-3 and the Mattapan neighborhood, *infra* at 13-15;

- failing to conduct an observational roadway study, *post* at 37, contra *Long*, 485 Mass. at 732-733 (holding such studies not required);

- failing to account for unavailable data on police stops resulting only in a warning, *post* at 37, contra *Long*, 485 Mass. at 732-733 & n. 10 (rejecting the same complaint from motion judge there);

- failing to consider the particular assignment of the officer, *post* at 37, contra *Long*, 485 Mass. at 724 (officer assignment is factor in totality-of-the-circumstances analysis, not statistical analysis).

Her totality-of-the-circumstances analysis is also irreconcilable with *Long* and its progeny. She relied on a conclusion that Mr. Tom's race "did not stand out" to the officer. *Post* at 37, contra *Long*, 485 Mass. at 734 (requiring consideration of role of implicit bias); see also *Commonwealth v. Diaz*, 496 Mass. 210, 219 (2025) ("prevalence of implicit bias means that many officers who conduct traffic stops in whole or in part because of the defendant's race" do so unwittingly). And she rested heavily on the fact that police confirmed that a traffic violation had occurred before the stop. *Post* at 37, contra *Long*, 485 Mass. at 727 ("merely point[ing] to the validity of the traffic violation that was the asserted reason for the stop" cannot rebut reasonable inference of discrimination).

Mr. Tom brought these many errors to the attention of the Appeals Court panel that heard his case. None of them is discussed in the panel's memorandum, which simply recites the judge's reasoning before affirming his conviction. *Post* at 26-27. Indeed, it would not be an exaggeration to say that the panel conducted no legal analysis of Mr. Tom's equal protection claim whatsoever.

If this is the kind of treatment that racial profiling claims receive from our courts, "the great harm" of racial profiling will continue almost entirely

unchecked. And that appears to be the path we are on: in the five and a half years since *Long* was decided, incidents of racial profiling by police have been rectified by a suppression order in our trial courts only three times. Although a 2022 study admitted in evidence at the hearing in his case showed that Black drivers are 1.6 times more likely than white drivers to be pulled over in Suffolk County (where Mr. Tom was stopped), undersigned counsel is aware of only one case in which a Suffolk County defendant has prevailed on a *Long* claim.[2]

Mr. Tom asks that this Court grant further appellate review to make a course correction and reinforce its *Long* decision with further guidance, particularly on the question of what constitutes adequate rebuttal by the Commonwealth. In this case, both the motion judge and the Appeals Court panel mistook the possibility of statistical rebuttal—that is, the Commonwealth's arguments that one hypothetical factor or another "called into question" the statistical analysis—for actual rebuttal. This Court should clarify that the burden to rebut a reasonable inference of discrimination requires more than "merely calling attention to possible flaws or unmeasured variables in defendants' statistics." *State v. Soto*, 324 N.J. Super. 66, 84 (1996). The Commonwealth can always imagine some potential factor that, if accounted for, *might* affect the analysis. This Court should hold that rebuttal requires the Commonwealth to "introduce specific evidence showing that either

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[2] In support of his motion to suppress, Mr. Tom presented an affidavit from Joshua Raisler Cohn, an attorney at the Committee for Public Counsel Services who tracks *Long* litigation. At that time Mr. Raisler Cohn had been in touch with over 70 attorneys litigating *Long* issues around the state and was not aware of a single order allowing a *Long* motion. Mr. Raisler Cohn informs undersigned counsel that he has now heard from over 100 lawyers litigating *Long* motions, and knows of three orders allowing them, two of which are currently on appeal by the Commonwealth. One of the orders being appealed arose in a Suffolk County case.

there actually are defects which bias the results or that the missing factors, when properly organized and accounted for, eliminate or explain the disparity." *Id.*

Likewise, this Court should clarify that although it is possible for the Commonwealth to rebut a statistical showing of discrimination based not on its own statistical analysis but instead on the totality of the circumstances of the case, a strong statistical inference of discrimination like the one here can only be rebutted by a correspondingly stronger circumstantial showing that the officer was entirely motivated by something other than race. The Commonwealth cannot be permitted to prevail, as it did here, merely because a judge credits an officer's testimony that he made a stop without conscious consideration of the driver's race, after observing a traffic violation.

Pursuant to Mass. R.A.P. 27.1, Mr. Tom asks that this Court allow further appellate review, reverse the order denying suppression, and vacate his conviction.[3]

PRIOR PROCEEDINGS

In October 2020, Neil Tom was arraigned in the Dorchester Division of the Boston Municipal Court on charges including driving on a suspended license, G.L. c. 90, § 23. He moved to suppress the evidence against him on the grounds that the traffic stop in this case and subsequent seizure of evidence violated his state and federal constitutional rights to be free from unreasonable searches and seizures and to have the equal protection of the law, citing *Commonwealth v. Long*, 485 Mass. 711 (2020). An evidentiary hearing on that motion was heard by Judge Lisa A. Grant, who denied the motion in a written order and memorandum on January 26, 2023. *Post* at 31.

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[3] Mr. Tom does not seek review of the second issue presented in his Appeals Court brief, challenging hearsay evidence of his suspended driver's license.

Following a jury trial, Mr. Tom was convicted of driving on a suspended license, and sentenced to ten days in the house of correction, deemed served, on August 18, 2023. [4] He filed a timely notice of appeal on August 31, 2023. His application for direct appeal was filed on August 6, 2024 and denied by this Court on March 17, 2025, and his case proceeded in the Appeals Court.

On August 18, 2025, a panel of the Appeals Court (JJ. Singh, D'Angelo, and Hodgens) issued an unpublished order affirming the conviction which merely repeated the judge's reasons for denying the *Long* motion. See *Commonwealth v. Tom*, No. 23-P-1511. *Post* at 22.

Mr. Tom sought modification of the panel's decision, requesting that references to acquitted charges be removed or modified. As of the time of this filing, the panel has not ruled on the motion for modification.

<center>STATEMENT OF FACTS</center>

The panel's discussion of the facts in the background section of the unpublished memorandum focuses on the circumstances of the traffic stop but omits some relevant details of that stop. First, the memorandum does not mention that the officers who stopped Mr. Tom were assigned to a "rapid response car" which they described as primarily designated for high-priority calls involving violence, including domestic violence, gun violence, and shot spotter activations. MTS I: 21, 100.[5] Nor does the memorandum report that after the officers learned that Mr. Tom—whom they described as "very cordial" and a "complete gentleman"—was

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[4] Mr. Tom was acquitted of the other charges against him, and they have been sealed. See *Commonwealth v. J.F.*, 491 Mass. 824 (2023); G.L. c. 276, § 100C.

[5] The defendant's record appendix in the Appeals Court accompanying is cited by page as "R.____." The hearing on the motion to suppress took place over two days; the transcript of the May 6, 2022 hearing is cited by page as "MTS I: ___" and the transcript of the August 17, 2022 hearing is cited by page as "MTS II: ___."

driving on a suspended license, they illegally pat-frisked him, finding nothing. MTS I: 51-52, 126.

The memorandum also does not discuss in any detail the extensive statistical evidence that Mr. Tom presented which showed a pattern of racial profiling by the officer who made the decision to stop him. Dr. Anne-Marie Hakstian, a professor at Salem State University who specializes in racial profiling, was qualified as an expert on statistical methods to test racial disparities. MTS II: 60. She produced a report and a supplemental report which were both submitted in evidence at the suppression hearing, at which she also testified. MTS II: 16-17; R. 39-88. Based on her findings, she concluded that neither Officer Monzon nor Officer Lekaditis enforces the traffic laws in a racially neutral manner. MTS II: 64; *post* at 35. Here, Mr. Tom focuses on Officer Monzon because the uncontroverted testimony was that he made the decision to stop the car. MTS I: 47, 113-114, 125.

Dr. Hakstian explained in her report that this type of statistical analysis involves measuring enforcement data by the officers involved against a benchmark of the expected stop rate of motorists of color, assuming that the police are not engaged in racial discrimination. R.42-43. The enforcement data she examined for Officer Monzon were his traffic citations in Boston Police Area B-3 from January 15, 2018 to December 12, 2020 and his Field Interrogation and Observation Reports (FIOs) between June 2017 and December 31, 2020. R. 48-49. She compared those numbers to four different benchmarks: 1) an "internal benchmark" of traffic citations and FIOs (analyzed separately) by other officers working in Area B-3 during the same time period: 2) the residential population of Mattapan, which comprises most of Area B-3; 3) the residential population of Area B-3; and 4) the driving population estimate for the City of Boston (which she readily conceded was not an especially relevant benchmark for comparison to a particular area of the city).

MTS II:36; R.48, 75. On every measure, she found statistically significant evidence of disparities in Officer Monzon's treatment of Black people.

Taking perhaps the most pertinent benchmark first, Dr. Hakstian compared Officer Monzon's traffic citations in Area B-3 to those issued by all other officers also working in Area B-3 over the same time period. Officer Monzon issued 89 traffic citations, of which 83.1% went to Black drivers and 6.7% to white drivers. Other Area B-3 officers wrote 69.6% of their citations to Black drivers and 10.9% to white drivers. If Officer Monzon were no more likely than his Area B-3 colleagues to cite Black drivers, this data would be observed only 3 in 1,000 times, easily clearing the threshold for statistical significance. R. 58.

Dr. Hakstian also compared Officer Monzon's FIOs to those of other officers in Area B-3. Officer Monzon subjected 163 people to FIOs during the time period analyzed by Dr. Hakstian; 94.5% of those people were not white. In contrast, 81.6% of FIOs conducted by other Area B-3 officers over the same time period concerned people who were not white. Dr. Hakstian determined that such a disparity would occur at random only 3 in 10,000 times, and thus it is statistically significant with 99.97% certainty. R. 65.

Dr. Hakstian explained that one method of benchmarking involves calculating a driving population estimate of a given city or town to account for the degree to which surrounding cities contribute to the driving population of the target city. This measure was developed by experts (including her thesis advisor, Dr. Amy Farrell) working on a landmark study of racial profiling in Massachusetts in 2004. Farrell, et al., Massachusetts Racial and Gender Profiling Study: Final Report, Inst. On Race and Justice of Northeastern University (2004), cited in *Long*, 485 Mass. at 753 (Budd, J., concurring). R. 43-44. The driving population estimate considers "push" and "pull" factors that lead motorists in a city to go elsewhere and draw in drivers who live outside the city. It also accounts for variables like the percentage

of city residents who own a car, or who drive more than ten miles for work. MTS II: 34.

Data for all of the variables that factor into the driving population estimate are not available on a neighborhood-by-neighborhood basis, so it is not possible to generate a driving population estimate just for Mattapan or Area B-3. MTS II: 37, 99. As defense counsel and Dr. Hakstian acknowledged, Boston's driving population estimate is an imperfect benchmark for a comparison involving an officer working in Area B-3, which is substantially more Black than the rest of the city and its surrounding areas. MTS I:7; MTS II: 33, 36; R.56. Thus, while a comparison of traffic citations by Officer Monzon to the driving population of the entire city of Boston did yield a statistically significant disparity, the defense did not rely on that disparity. MTS II: 135.

Instead, Dr. Hakstian compared Officer Monzon's citations to two more relevant benchmarks: the racial demographics of Mattapan, which comprises most of Area B-3, and the racial demographics of Area B-3.[6] U.S. Census data show that Mattapan is 6.2% white, 68.3% Black, 17.1% Hispanic, 2.1% Asian, and 6.3% "other". MTS II: 38; R.55. As Dr. Hakstian explained, using the residential population of Mattapan as a proxy for its driving population is a conservative estimate, because Mattapan has the largest proportion of Black residents in the city and the driving population includes people who live in the surrounding neighborhoods and suburbs, which all have smaller Black populations. R.38, 56; MTS II: 50. Nonetheless, Dr. Hakstian found a highly statistically significant disparity between Black

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[6] Dr. Hakstian's first analysis used the demographics of the residential population of Mattapan because census data for Mattapan are more readily available than census data for Area B-3. However, after consulting with another expert and data experts for the City of Boston, she was able to estimate a racial breakdown for Area B-3, and then to do the analysis again based on that data. R. 75.

drivers cited by Officer Monzon and Black residents of Mattapan. In the absence of racial profiling, and even using the conservative benchmark of the Mattapan population, one would expect such a high percentage of people cited by Monzon for traffic violations to be Black only 1 in 1,000 times. MTS II: 41; R.56. When the percentage of people subjected to FIOs by Officer Monzon who were Black was compared to the Black population of Mattapan, the result was even more dramatic: it would be expected only 3 times in 10,000. R. 63.

Dr. Hakstian also calculated the demographics of Area B-3. With the help of a data manager at the City of Boston who superimposed the map of B-3 onto a Census Bureau map, Dr. Hakstian could see exactly which Census blocks were contained within the district and then look at the data for those Census blocks. She found that 63.1% of residents of B-3 are Black, as compared to 68.3% of residents of Mattapan. Thus, the disparity between the proportion of the residential population of Area B-3 who are Black and the proportion of drivers cited by Officer Monzon who are Black was even greater than the disparity observed when the residential population of Mattapan was used as the benchmark. The same was true when Dr. Hakstian looked only at the adult population of Area B-3, which is 65.6% Black. MTS II: 45, 47; R.76, 88.

The defense also introduced, as an exhibit at the evidentiary hearing, a June 2022 Vera Institute of Justice report on racial disparities in Suffolk County from 2010 to 2019. R. 99-135. That report found that during that time period, Boston police stopped Black drivers at a rate 2.4 times greater than the rate of white drivers. Much of that disparity is driven by a disparity in non-traffic-safety stops, like the one in this case, in which Black people are 3.9 times more likely to be stopped than white people. R. 106. And the Boston police district with the highest percentage of stops of Black drivers for non-traffic safety reasons is Area B-3. R. 107, 110. The report also found that Black drivers in Suffolk County were 2.6 times more likely

than white drivers to be stopped for violations of G.L. c. 90, § 6 – the license plate statute which includes failure to display a front plate. R. 111.

The Commonwealth introduced no statistical evidence in rebuttal at the evidentiary hearing, though it did attach to its written opposition a 2015 report on racial and ethnic patterns in FIOs by Boston police. That report found that the percentage of Black and Hispanic residents in Boston neighborhoods was a significant predictor of increased FIO activity in those neighborhoods, "above the rate that would be predicted by crime alone." R. 169, 171.

ISSUE PRESENTED

Neil Tom, a Black man, was stopped for not displaying a front license plate by a Boston police officer primarily assigned to respond to high priority calls involving violence. A robust statistical analysis showed that the officer has a significant history of disproportionately stopping Black drivers, relative to the estimated numbers of Black drivers in the area and as compared to their representation in the area of the stop and as compared to other officers working in the same area. Given that the statistical presentation easily raised a reasonable inference of racial discrimination, did the motion judge err in concluding that the Commonwealth successfully rebutted it by a) simply pointing out hypothetical variables that it speculated—but did not prove—might, if accounted for, affect the analysis and b) relying on the officer's claim that he had not consciously considered Mr. Tom's race when he stopped him after observing the non-safety, non-priority traffic violation?

The reasonable inference of racial discrimination raised through the defense statistical analysis was not rebutted by speculation about whether potential variables could have affected it, nor by the officer's inability to recall whether he noticed Mr. Tom's race before the stop.

A. In addressing the statistical case put on by the defense, the motion judge and Appeals Court panel misstated the evidence, ignored this Court's precedent, and repeatedly speculated about the potential impact of factors not shown to actually affect the expert's conclusions.

As summarized above, Dr. Hakstian primarily relied on two types of benchmarks in analyzing Officer Monzon's pattern of traffic citations and FIOs. First, she compared the percentage of Black people cited or FIO by Monzon to relevant population demographics: the Mattapan residential population, the Area B-3 residential population, and the adult Area B-3 residential population. This approach closely resembled the analysis approved of in *Long*. In both cases, the experts reasoned that the relevant residential population demographics provided a conservative benchmark because they likely overestimated the Black *driving* population, as the "proportion of Black residents was lower in all of the surrounding areas and municipalities" than in the benchmark areas. See *Long*, 485 Mass. at 732, n.17;R.56,77,87;MTS II:49,50. Thus, it is inferable that the driving population of Mattapan or Area B-3—which includes people traveling from those surrounding areas—is less Black than the residential population of Mattapan or Area B-3. See *Long*, 485 Mass. at 732 n.17. If the analysis could account for drivers from neighboring areas, the benchmark would presumably be less Black, exacerbating the disparity with the enforcement data. But even using the conservative estimate, Dr. Hakstian found a disparity rate for Officer Monzon's traffic citations that would occur no more than one time in a thousand in the absence of racial profiling. R.56.

Second, she undertook an analysis not done in *Long*: she compared Monzon's data to that of his colleagues also working in Area B-3, finding that the

higher rate at which he cited Black drivers would be expected by chance only 3 in 1000 times. His higher rate of FIOing Black residents was even less likely. Meanwhile, a report on racial disparities in Suffolk County from 2010 to 2019 showed that Boston police stopped Black drivers at significantly higher rates than white drivers, particularly for non-traffic safety reasons implicating heightened officer discretion, and that Area B-3 had the highest percentage of stops of Black drivers for non-traffic safety reasons. R.106-107;110-111. Patterns like these could confound an internal benchmark analysis, as they might obscure an individual officer's pattern of racial profiling. See Farrell, et al., Identifying and Measuring Racial Profiling by the Police, Sociology Compass, 4/1 (2010) 77-88, 85.[7] But not so here: even in a department and district whose data reflect significant racial disparities in traffic stops, Officer Monzon's numbers stand out for how strongly they suggest racial profiling.

In short, the statistical case presented here was *more* compelling than the *Long* evidence that this Court said should have prevailed even under the "overly heavy" burden previously required under *Commonwealth v. Lora*, 451 Mass. 425 (2008). See *Long*, 485 Mass. at 715. Inexplicably, the motion judge ignored it, erroneously concluding that Dr. Hakstian "misse[d] the mark" by using as a benchmark "the estimated driving population of Boston, not the Mattapan or Dorchester neighborhoods." *Post* at 37. Dr. Hakstian included a comparison of Officer Monzon's data to the Boston driving population estimate in her report, but neither she nor defense counsel relied on it; both readily acknowledged that it was not a particularly useful benchmark here. MTS II:33,36,135. Nonetheless, the panel affirmed the judge's mistaken complaint that Dr. Hakstian "relied on

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[7] Available at https://doi.org/10.1111/j.1751-9020.2009.00261.x.

benchmarking data for the entire city of Boston rather than the" relevant neighborhoods, *post* at 26, and undertook no analysis of her actual statistical presentation.

Similarly, the panel endorsed the judge's finding that Dr. Hakstian did not consider which shifts the officer worked. *Post* at 26. That is incorrect. To account for the possibility that different demographic patterns might be encountered during the evening shift, when Monzon wrote most of his citations, Dr. Hakstian compared his evening shift citations to those of other B-3 officers. The statistical significance of the disparity between stops of Black drivers by Officer Monzon and other B-3 officers did not change. MTS II:54.

Beyond these factual missteps, an analytical error runs throughout the judge's order and the panel's memorandum endorsing it: mistaking the possibility of rebuttal for rebuttal. Mr. Tom raised a reasonable inference of racial discrimination, shifting the burden to the Commonwealth to "grapple with all of the reasonable inferences and all of the evidence that a defendant presented . . . to prove that the stop was not racially motivated." *Long*, 485 Mass. at 726. That burden is not satisfied simply by pointing out theoretical problems in the defense analysis, without establishing that those potential flaws affect the analysis, and favor the defendant. But here, the judge repeatedly allowed theoretical hole-poking—sometimes based on factual mistakes—to stand in for actual rebuttal, and the panel endorsed her approach.

For example, the panel approvingly noted the judge's critique that Dr. Hakstian did not consider "the number of verbal warnings made by the officers in contrast to the number of citations issued." *Post* at 26. This Court rejected precisely this complaint in *Long*, holding that the motion judge erred in refusing to draw the obvious inference that if the rate of an officer's citations is racially skewed, the rate of stops is "similarly disproportionate." *Long*, 485 Mass. at 733. And the desired

comparison was impossible: Boston police do not document verbal warnings. MTS I:14. Defendants must be able to rely on the available data; otherwise, the Commonwealth could defeat all racial profiling claims based on traffic stop data by continuing not to collect information on verbal warnings. See id. at 732-733 & n. 19. Mr. Tom brought this discussion in *Long* to the panel's attention, Def. Br. at 35, to no avail.[8]

Likewise, Dr. Hakstian did not "consider the assignment of each officer." *Post* at 37. But that is a factor in the totality-of-the-circumstances analysis, not the statistical analysis. See *Long*, 485 Mass. at 724. The judge did not explain why an officer's assignment might justify racial disparities in traffic stops, or why it was a problem that the analysis did not "consider . . . the length of each officer's shift." *Post* at 37.

The panel also endorsed the judge's complaint that Dr. Hakstian did not consider "the effect, *if any*, that the pandemic shutdown played on skewing data." *Post* at 37 (emphasis added). The judge did not explain why the shutdown, which spanned only a relatively short part of the time frame for which Officer Monzon's citations were analyzed, would have altered the racial balance of drivers. In particular, she did not explain why drivers in Area B-3 during the COVID shutdown would be more likely to be Black than people living in Area B-3. Nor did she acknowledge that if such an effect had occurred, it would have affected all Area B-3 officers equally and thus cannot explain the striking disparities between Officer Monzon and his colleagues.

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[8] The motion judge similarly made another complaint about the defense case already rejected in *Long*: that Dr. Hakstian did not conduct an observational roadway analysis. *Post* at 37; see *Long*, 485 Mass. at 732-733. Observational analyses are time-consuming and expensive. R.42. Requiring them for any defendant raising an equal protection claim would require a massive expenditure of resources, or render illusory the prospect of relief after a constitutional violation.

That the defense cannot rule out some imagined impact from the pandemic does not mean that the prosecution has rebutted the inference of racial profiling arising from statistics and the totality of the circumstances. The Commonwealth (or a judge) will always be able to point to some potential factor unaccounted for in the analysis. But until that factor has been shown to make a difference, nothing has been rebutted. Otherwise, the defense's burden to establish a reasonable inference of discrimination is transformed into a burden to negate all imaginable innocuous explanations for a statistical showing of racial profiling.

B. The motion judge and Appeals Court panel erred in concluding that the "totality of the circumstances" surrounding the stop undermined, rather than corroborated, the statistical evidence.

In concluding that a totality-of-the circumstances analysis rebutted the inference of racial profiling, the judge made several errors, which the panel failed to correct.

First, the panel endorsed the judge's reasoning that "unlike *Long*, Officers Monzon and Lekaditis were not out running random license plates. They were assigned to patrol their District, enforcing traffic laws." *Post* at 37. But *Long* does not require a defendant to establish that that the police who stopped him were "out running random license plates." And the officers here were *not* on traffic duty but in a rapid-response car, which "primarily answer[s] more violent calls." MTS I: 21. "[T]he regular duties of the officer involved in the stop" weigh against the Commonwealth, as "[t]raffic stops initiated by officers whose primary assignment does not involve the enforcement of traffic law might warrant particular scrutiny." *Long*, 485 Mass. at 724 & n.8.

Second, while the judge recognized that the absence of a front license plate is "neither the most egregious motor vehicle infraction nor is it one of the five priority traffic offenses for the Boston Police Department," she speculated that "it may indicate that a vehicle is a stolen motor vehicle." *Post* at 36. No testimony

supported the notion that car thieves tend to remove one license plate from a stolen car. Neither "the safety interests in enforcing the motor vehicle violation" nor "the specific police department's policies and procedures regarding traffic stops" weighed in favor of the Commonwealth. *Long*, 485 Mass. at 725.

Finally, the panel approvingly noted the judge's emphasis on Monzon's observation of a traffic violation and that "the driver's race or skin color did not stand out" to him. *Post* at 27. On the first count, a traffic violation is a given on this equal protection claim. See *id.* at 718, 726. On the second, what matters is that circumstances "allowed the officer to note the defendant's race"; Mr. Tom and Officer Monzon passed each other in opposite directions on a two-lane road in the afternoon. MTS I: 40, 42, 66, 125. See *Long*, 485 Mass. at 724 n.9. "[I]mplicit bias may lead an officer to make race-based traffic stops without conscious awareness"; such stops can be challenged "regardless of the officer's lack of awareness of any bias." *Id.* at 720, 734. Monzon's testimony that he did not recall whether he noticed Mr. Tom's race before stopping him is insufficient to rebut the evidence that the stop was, at least partly, racially motivated.

Other circumstances corroborated the inference of racial profiling: Officer Monzon, who often observes traffic violations without stopping drivers, made a U-turn on a two-lane road to purportedly check whether a minor civil infraction was being committed, and he illegally patfrisked Mr. Tom. And Mr. Tom was driving a BMW; Dr. Hakstian cited evidence that "[B]lack men driving luxury cars are more likely to be stopped than others driving luxury cars" and permitting a conclusion "that driving an expensive car raises police suspicion for [B]lack drivers." R.41.

This Court conceived of the totality-of-the-circumstances analysis as a tool for *defendants* "to present and demonstrate their claims of racial profiling" when statistics are unavailable. 485 Mass. at 715. In some cases, the circumstances present such solid reasons for the stop that they instead operate to rebut the inference of

racial profiling. See *Commonwealth v. Robinson-Van Rader*, 482 Mass. 1, 22 (2021). But this is not such a case, and this Court should grant further appellate review to clarify that when a strong statistical case of discrimination is raised, it can be rebutted by circumstances only when they are even more compelling.

Respectfully submitted,

NEIL E. TOM, JR.

By his attorney,

/s/ Rebecca Kiley
Rebecca Kiley, BBO # 660742
COMMITTEE FOR PUBLIC COUNSEL SERVICES
Public Defender Division
75 Federal Street, Sixth Floor
Boston, Massachusetts 02110
(617) 482-6212

October 8, 2025   *rkiley@publiccounsel.net*

CERTIFICATE OF COMPLIANCE

I hereby certify that this application complies with rules 20 and 27.1 of the Massachusetts Rules of Appellate Procedure. The application is set in 14-point Athelas font and its argument contains 1990 non-excluded words, as determined through use of the "Word Count" feature in Microsoft Word for Office 365.

/s/ Rebecca Kiley
Rebecca Kiley

CERTIFICATE OF SERVICE

I hereby certify that I have today served the Application for Further Appellate Review of Defendant-Appellant Neil E. Tom, Jr. on the Commonwealth by directing a copy through the electronic filing service provider to ADA Brynn Morse of the Suffolk County District Attorney's Office.

/s/ Rebecca Kiley
Rebecca Kiley, BBO # 660742
COMMITTEE FOR PUBLIC COUNSEL SERVICES
Public Defender Division
75 Federal Street, Sixth Floor
Boston, Massachusetts 02110
(617) 482-6212

October 8, 2025   *rkiley@publiccounsel.net*

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

23-P-1511

COMMONWEALTH

vs.

NEIL E. TOM, JR.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

After a Boston Municipal Court judge denied a motion to

suppress filed by the defendant, Neil Tom, Jr., a jury found him

guilty of driving with a suspended license. He appeals from the

denial of his motion to suppress and his conviction. We affirm.

Background. The motion judge's findings, as supplemented

by testimony from the suppression hearing transcript, show that

on October 3, 2020, at about 11:53 A.M., Officers Lorenzo Monzon

and Peter Lekaditis patrolled the Mattapan and Dorchester

section of Boston in a marked cruiser. While driving in

Dorchester along Norfolk Street, which had been the subject of

speeding complaints from the community, Officer Monzon spotted a

gray SUV missing a front registration plate approaching from the

opposite direction. Officer Monzon could "not remember whether he noticed the person inside the SUV." Because Massachusetts registration plates bearing green numbers do not have to be affixed to the front of vehicles, Officer Monzon made a U-turn and drove behind the SUV and verified that the plate numbers were red -- indicating a motor vehicle violation for the missing plate. Given the motor vehicle violation, Officer Monzon signaled the SUV to stop with lights and siren, and the SUV stopped in a bus lane. The officers walked up to the SUV, and Officer Monzon told the defendant that he stopped him due to the missing plate and asked for his license and registration. The defendant produced the registration and a Massachusetts identification card and said that his mother had the registration plate on a car she just purchased. He said his license had been suspended, and Officer Monzon verified the suspension through a computer check.

At Officer Monzon's request, the defendant exited the vehicle but was neither arrested nor handcuffed at this point. The officers decided to tow the vehicle given the obstruction of the bus lane, the defendant's license suspension, and the absence of anyone else who could drive. The officers arrested the defendant after ███████████████████████████████████ during an inventory search in preparation for towing. A complaint issued in connection with the incident.

The defendant filed a motion to suppress the evidence obtained from the motor vehicle stop and included an allegation that the stop was "motivated by race." In a supporting memorandum of law, the defendant claimed that race was a motivating factor because the motor vehicle offense was minor and rarely enforced, the vehicle (a BMW) was a "potential flag for discrimination," the stop was pretextual "where the police were fishing for evidence," and a statistical analysis of the officers' prior interactions with the public "raise[d] a strong inference of racial discrimination." The motion judge determined that the statistical analysis raised a reasonable inference of racial profiling and conducted an evidentiary hearing.

At the evidentiary hearing, the officers testified to the details of the stop as summarized above, and the defense presented statistical data as well as testimony from a college professor "specializ[ing] in racial profiling broadly" with particular "expertise in consumer racial profiling" or "discrimination against shoppers of color." The defendant presented several exhibits, including the professor's report on the racial and ethnic disparities in traffic citations issued by the officers involved in the stop. After considering the testimony and exhibits, the judge denied the motion to suppress in a memorandum of decision dated January 26, 2023.

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The case proceeded to trial on August 17, 2023, with a different judge presiding, and a jury found the defendant guilty of driving with a suspended license and acquitted him of other charges in connection with the motor vehicle stop.

Discussion. 1. Equal protection. When claiming a traffic stop violated principles of equal protection, a defendant must initially establish through the totality of the circumstances "a reasonable inference that the officer's decision to initiate the stop was motivated by race or another protected class." Commonwealth v. Long, 485 Mass. 711, 713 (2020). The defendant "must produce evidence upon which a reasonable person could rely to infer that the officer discriminated on the basis of the defendant's race or membership in another protected class. Conclusive evidence is not needed." Id. at 723-24. If the defendant meets the initial burden of showing an inference of discrimination, then the burden shifts to the Commonwealth to rebut that inference, and the Commonwealth cannot merely rely on the validity of the traffic violation as the reason for the stop. Id. at 724, 726. The Commonwealth must "grapple with all of the reasonable inferences and all of the evidence that a defendant presented, and would have to prove that the stop was not racially motivated." Id. at 726. On appeal, we review "whether there was error in the judge's conclusion that the Commonwealth met its burden of rebutting an inference of

selective enforcement by articulating an adequate, race-neutral reason for the stop." Commonwealth v. Robinson-Van Rader, 492 Mass. 1, 16 (2023). We discern no error.

Denying the motion to suppress, the judge concluded, "Upon considering the totality of the circumstances, the Commonwealth proved by a preponderance of evidence, that this stop was not motivated by race. In addition, the actions occurring after the initial stop, once they learned that the [d]efendant did not have a valid license and had pulled over in a bus lane, were not motivated by race." The record before us shows that the judge based these conclusions on a careful review and weighing of the evidence presented. Unpersuaded by the professor's testimony, the judge found the statistical analysis relied on benchmarking data for the entire city of Boston rather than the Mattapan and Dorchester neighborhoods being patrolled by the officers and failed to consider traffic on the road in question, the particular shift assignments of each officer, the number of verbal warnings made by the officers in contrast to the number of citations issued, and the effect, if any, that the pandemic shutdown played on skewing data collected on the number of motorists on the roads and the number of tickets issued. Additionally, the judge found that the professor's analysis did not account for evidence that the officers were specifically assigned to address traffic enforcement, witnessed an

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infraction, and were not simply running random license plate checks. The judge further found that before initiating the stop, the officers confirmed the color of the numbers on the rear plate, and "the driver's race or skin color did not stand out." Moreover, the judge found that the events that followed the stop provided race-neutral reasons to search the SUV. See Robinson Van-Rader, 492 Mass. at 23 ("There may be substantial overlap between an inquiry into the reasonableness of a stop and the officer's motivation for stopping a suspect"). Giving due deference to the motion judge's evaluation of the weight of the evidence presented, we discern no clear error. Id. at 9.

We also discern no error from the motion judge's legal conclusions. To the extent that the defendant contends that the Commonwealth can only meet its burden by presenting statistical evidence of its own, we disagree. A judge must consider the "totality of the circumstances," Long, 485 Mass. at 724-725, which may include "the reasons the officer decided to target the defendant." Robinson-Van Rader, 492 Mass. at 20. Without relying on its own statistical evidence, the Commonwealth may still meet its burden by showing race-neutral reasons for "the sequence of events prior to the stop." Long, supra at 724. See, e.g., Robinson-Van Rader, supra at 23-24 (Commonwealth met burden without statistical evidence).

2. Evidence of suspension. The defendant raises one error
with respect to the trial. He contends that the Commonwealth
offered inadmissible hearsay to prove that the defendant's
license had been suspended, and the defendant's admission on the
roadside is insufficient to prove his guilt without
corroboration. Here, both officers testified that the defendant
admitted his license had been suspended, a fact verified through
a computer check. Because the defendant lodged no objection to
the testimony, we review only to determine whether an error
created a substantial risk of a miscarriage of justice.
Commonwealth v. Keevan, 400 Mass. 557, 562 (1987). Here, we
perceive no such risk.

 We first address whether there was an error. We agree with
the defendant that the officers' testimony about the result of
the computer check constituted inadmissible hearsay. See
Commonwealth v. Royal, 89 Mass. App. Ct. 168, 169 (2016)
(hearsay where officer testified that he "ran . . . the
[defendant's driver] license number through the Registry of
Motor Vehicles" and it "came with a status of suspended"). We
disagree that his admission to the license suspension lacked
corroboration that a crime had been committed because the police
were percipient witnesses to the defendant driving the SUV. See
Commonwealth v. Costello, 411 Mass. 371, 375 (1991)

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(corroboration rule "does not require corroboration of each element of a crime").

Whether or not the admission of the evidence constituted an error, the record reveals that the defendant did not object to this testimony for evident strategic reasons. See Commonwealth v. Delong, 72 Mass. App. Ct. 42, 46 (2008), citing Commonwealth v. Beliard, 443 Mass. 79, 88-89 (2004). Through cross-examination of the officers, the defendant sought to distance himself ███████████████████████████████████████ by highlighting his courtesy and cooperation with the officers and his candor about the license suspension. In closing argument, defense counsel emphasized this theme of candor and cooperation that would be logically inconsistent with someone ███████████ ██ ███████████. See Commonwealth v. Pytou Heang, 458 Mass. 827, 852 (2011) ("Where inadmissible evidence is admitted because of a defendant's reasonable tactical decision, there is no substantial likelihood of a miscarriage of justice"). We also note that this strategy met with success as the jury acquitted the defendant of the possession offenses connected with the SUV. Thus, we discern no substantial risk of a miscarriage of justice.

<div align="right">Judgment affirmed.</div>

By the Court (Singh,
                                      D'Angelo & Hodgens, JJ.[1]),

                                    Clerk

Entered: August 18, 2025.

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   [1] The panelists are listed in order of seniority.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BOSTON MUNICIPAL COURT
DORCHESTER DIVISION

DOCKET NO(s) 2007 CR 2547

COMMONWEALTH

v.

NEIL TOM

DECISION ON THE DEFENDANT'S MOTION TO SUPPRESS

PROCEDURAL HISTORY

The Defendant is charged w███████████████████████████████████
██ unlicensed operation of a
motor vehicle. The date of alleged offense is October 3, 2020.

A two-day hearing on the Defendant's motion to suppress was conducted on May 6,
2022, and August 17, 2022. Boston Police Officers Lorenzo Monzon and Peter Lekaditis
testified on the first date. On the second date, Professor Anne-Marie Hakstian testified. Several
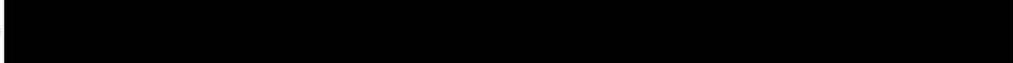exhibits were admitted into evidence.

FINDINGS OF FACT

Based upon the credible evidence presented, the Court makes the following findings:

1. Officer Monzon has worked as a Boston Police Officer for approximately six
   years.
2. Officer Lekaditis has worked as a Boston Police officer for approximately five
   years; previously he served on the Lunenburg Police Department for three years.

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3. Officers Monzon and Lekaditis were working the day shift together; Officer Monzon was the driver.
4. Both officers were performing overtime, and, therefore, were not wearing body worn cameras, per the BPD policy at that time.
5. The officers were patrolling Area B-3, Mattapan and parts of Dorchester.
6. Throughout his career, Officer Monzon has made numerous motor vehicle stops due to motor vehicle infractions.
7. When on patrol, Officer Monzon routinely runs license plates to determine whether someone's registration is active, confirm an inspection sticker, and/or check for warrants.
8. Additionally, Officer Monzon may run a license plate to determine whether the registered owner has a history of violence, for his/his colleagues' safety.
9. If Officer Monzon sees a motor vehicle or traffic violation, he may conduct a traffic stop but not always; 911 calls or more serious motor vehicle offenses take precedence.
10. If Officer Lekaditis sees a motor vehicle or traffic violation, he conducts a traffic stop unless it is a minor infraction and/or he is responding to a service call.
11. At approximately noon, the officers were patrolling Norfolk Street, a residential neighborhood.
12. Norfolk Street is the subject of community complaints regarding speeding.
13. While patrolling, they were driving the speed limit, 25 mph.
14. While traveling outbound, Officer Monzon noticed a gray SUV without a front license plate traveling inbound.
15. He does not remember whether he noticed the person inside the SUV.
16. Officer Monzon, who was driving, made a U-turn in order to drive behind that SUV and check its rear license plate.
17. Officer Monzon saw that the rear plate was a Massachusetts license plate with red lettering/numbering.
18. Officer Monzon knew that, pursuant to Massachusetts law, MA license plates with red lettering/numbering were required to be affixed to both the front and rear of the SUV.
19. Because the SUV was in violation of motor vehicle since there was no front license plate, Officer Monzon believed a motor vehicle infraction occurred.
20. Officer Monzon has previously and pulled over vehicles that did not display a front license plate.
21. Even though failure to have a front license plate is not on the list of high priority traffic violations[1] for the Boston Police, Officer Monzon has made "well over 50" such stops; some of those stops resulted in a verbal warning, others a written warning, and the remainder in a citation.
22. Officer Monzon considers a person's driving record when deciding whether to issue a warning or a citation.
23. Officer Monzon activated his car's lights and sirens and pulled the SUV.
24. When pulling over, the SUV stopped in a bus lane.

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[1] High priority traffic violations include (speeding, 10+ miles in excess, failure to stop for a red light, failure to stop for a stop sign, failure to stop for a pedestrian, and improper passing of a school bus.)

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25. Officer Monzon approached the driver's side of the SUV. Meanwhile, Officer Lekaditis approached the passenger's side.
26. The Defendant, a black man, was the driver.
27. Officer Monzon described their interaction as pleasant.
28. Officer Lekaditis described the Defendant as "cordial".
29. Officer Monzon informed the Defendant that he was stopped because there was no front license plate on the SUV.
30. The Defendant explained that his mother had the front plate as she had recently purchased a new car.
31. In response to Officer Monzon's requests, the Defendant provided the SUV's registration. However, he informed the officers that his license was suspended.
32. The Defendant provided his MA identification card.
33. Officer Monzon queried the Defendant's information in CJIS and confirmed that his license was suspended.
34. Officer Monzon instructed the Defendant to get out of the car, which he did.
35. The Defendant was wearing a GPS anklet.
36. Officer Monzon asked why; the Defendant responded that it was due to a home invasion.
37. The Defendant was neither arrested nor handcuffed at that time.
38. As the Defendant's license was revoked, the car was in a bus lane, and there was no one else in the SUV, the officers decided to tow the SUV; as a result, they called for a tow.
39. Pursuant to Boston Police Department motor vehicle inventory policy, the officers conducted an inventory search of the SUV.
40.
41.
42.
43. The officers placed the Defendant under arrest.
44. Right around this time, the Defendant's mother arrived on scene.
45. The license plate that should have been affixed to the SUV's front was affixed to the mother's car's rear.
46. Although that plate was unlawfully attached to another car, the officers did not arrest the Defendant's mother.
47. As Officer Lekaditis explained her son was just arrested and he "figured that would be inappropriate to do that to her."
48. Professor Ann-Marie Hakstian is a professor at Salem State University.
49. She specializes in racial profiling, specifically an expertise in consumer racial profiling.
50. She holds a JD and PhD.
51. Her PhD research (2014 dissertation) was an analysis of what, if any, reforms were made by municipal Massachusetts police department policies regarding traffic citations.
52. Professor Hakstian's advisor was Dr. Farrell, the author of a seminal 2004 report regarding police racial profiling.

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53. Professor Hakstian's research regarding consumer racial profiling "mirrors" research on police racial profiling.
54. Some of Professor Hakstian's research has been published in law reviews or business journals. Most, if not all, of her published materials relate to consumer equality and/or racial profiling.
55. Professor Hakstian has previously testified seven times as an expert.
56. She has written approximately twenty-one reports. Approximately six to seven of those reports found no evidence of racial disparities.
57. Professor Hakstian is working with the Massachusetts State Police as a subcontractor.
58. Professor Hakstian's current syllabus does not include police racial profiling.
59. In this case, the professor was hired to review data concerning citations and FIOs of the two officers involved in this case. Ultimately, she wrote two reports. The second was at the direction of defense counsel, who wanted additional analyses.
60. Her analysis in this case includes three comparisons a) racial/ethnic breakdown of citations compared to drivers' demographics of that area; b) racial/ethnic breakdown of citations in comparisons to the officers' colleagues; and c) post-stop outcomes of the officer's citations.
61. For both officers, Professor Hakstian reviewed traffic citation and FIO data.
62. As to race/ethnicity, officers are required to fill out the forms with B for black, W for white, H for Hispanic, A for Asian, M for middle eastern, and UNK for unknown.
63. Professor Hakstian noted that Officers Monzon and Lekaditis have very few citations outside of District B-3. Therefore, she limited her analysis to B-3 citations.
64. She considered 89 citations for Officer Monzon for approximately two years in district B-3.
65. Of those 89 citations, 6.7% were to white drivers and 83.1% were to black drivers.
66. She considered 163 FIOs for Officer Monzon; 82.8% were of black people and 5.5% were of white people.
67. She considered 38 citations[2] for Officer Lekaditis.
68. Of those 38 citations, 76.3% were to black drivers and none were to white drivers.
69. She considered 51 FIOs for Officer Lekaditis; 92.2% were of black people and 2% were of white people.
70. Professor Hakstian used the driving population of Boston as a comparison benchmark; 62.3% are white drivers, 14.1% are black drivers, 11.8% are Hispanic drivers, 8.6% are Asian drivers, and 3.2% belong to other racial ethnic groups.
71. Additionally, Professor Hakstian used the 2020 census and Boston Planning and Development Authority numbers for Mattapan. 68.3% are black, 17.1% are Hispanic, 2.1% are Asian, 6.2% are white, and 6.3% belong to other groups.
72. Professor Hakstian did not consider voting wards/precincts; nor did she consider the number of registered voters (ages 18+) in the area.

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[2] There were 39 citations; however, one citation did not record the driver's race/ethnicity.

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73. Profession Hakstian concluded that there was a "statistically significant difference" in comparing the proportion of black people cited by Officer Monzon with the proportion of black people "in the neighborhood of Mattapan."
74. With Officer Lekaditis, Profession Hakstian concluded that although "...he did stop more black people than the percentage of black people who live in Mattapan...the difference is not large enough to be statistically significant."
75. When comparing Officer Monzon's citation numbers to the number of black residents overall in B-3, the disparity was "enlarged."
76. Professor Hakstian explained that the residential population numbers do not take into account drivers who are passing through Mattapan or B-3.
77. Professor Hakstian compared the citation number of Officers Monzon and Lekaditis to their colleagues in B-3.
78. When comparing FIO data, Professor Hakstian's nephew, Jordan Harris (who holds an undergraduate degree in physics and math).
79. Subsequently, Professor Hakstian checked the numbers and data.
80. Ultimately, Professor Hakstian concluded the officers "do not enforce the traffic laws in a racially neutral manner."
81. The professor never went to the area of the stop to collect data from motorists who travel through that area, nor did she personally observe traffic behavior in that area.
82. The professor did not use aerial or red-light cameras as a means of monitoring the area in question.
83. According to Professor Hakstian, the "gold standard" of review would be to spend time in the neighborhood in question.
84. The professor did not consider the time of day in which any of the citations were issued despite her acknowledgement that it is relevant, especially if a citation is cited on a weekend.
85. Professor Hakstian indicated that she would not have been able to perform a statistical analysis on the nine citations issued by Officer Monzon during daytime hours nor would she have been able to perform a statistical analysis on Officer Lekaditis' five daytime citations due to such a small sample.
86. Throughout her analysis, the professor did not know whether the officer issued the citations during their regular shift versus an overtime shift.
87. Professor Hakstian admitted that it is important to find motorists who are in a similarly situated position as the Defendant (who was stopped in the middle of the afternoon).
88. When considering the aggregate number of citations, the professor did not consider the various positions/roles held by the officers issuing those citations.
89. The professor is not aware of any research related to the number of citations issued by officers who are working with a partner in comparison to officers who worked solo.
90. Professor Hakstian agreed that the formula to calculate the driving population estimate within the city of Boston did not include drivers/commuters who live beyond thirty minutes of the city.

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91. The date of this alleged incident is October 3, 2020, a time during the COVID shut down, where the majority of people were working from home and a significant number of children were attending school via Zoom.
92. No statistical analysis was performed comparing pre COVID citation numbers with post COVID citation numbers.

DISCUSSION

The Boston Police officers had a legal basis to stop the Defendant. As the vehicles approached one another, Officer Monzon noticed there was no front license plate affixed to the BMW SUV. Upon making a U-turn, seeing the rear license plate, and believing that Massachusetts law required a front license plate, the officers had a legitimate reason to stop the SUV for a motor vehicle infraction. True, this was neither the most egregious motor vehicle infraction nor is it one of the five priority traffic offenses for the Boston Police Department. However, the lack of a front license plate may be significant; it may indicate that a vehicle is a stolen motor vehicle. To that end, Officer Monzon has previously made approximately fifty stops, for this exact issue, during his six years as a Boston Police Officer.

The events that followed provided the officers with a legal basis to issue an exit order, perform an inventory search, and tow the car. The Defendant pulled over in a bus lane. He admitted that his license was suspended. Further, he indicated that his mother was using the front license plate on her newly purchased vehicle. The Defendant was alone in his car. Thus, no one else was able to drive his car away from the scene. As a result, the officers had a lawful basis for conducting an inventory search of the car. The inventory search began before the Defendant's mother arrived on scene. ███████████████████

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A quick look at the statistical analysis raises a reasonable inference of racial profiling. Indeed, both Officer Monzon and Lekaditis appear to issue citations to black drivers at a much higher rate than that of their colleagues.

However, while Professor Hakstian's statistical analysis is both interesting and relevant, the Court finds that her analysis misses the mark in several aspects. The benchmark is the **estimated**[3] driving population of Boston, not the Mattapan or Dorchester neighborhoods[4]. The analysis does not include observational analysis of the actual road(s) in question. The analysis does not consider the role/duty of each officer. Neither does the analysis consider the assignment of each officer nor the length of each officer's shift. Additionally, the analysis does not capture the number of verbal warnings made by the officers in contrast to the number of citations issued. Moreover, the analysis did not consider what effect, if any, the COVID "shutdown" played on the number of motorists on the roads and the number of tickets issued.

In this case, unlike *Long*, Officers Monzon and Lekaditis were not out running random license plates. They were assigned to patrol their District, enforcing traffic laws. Specifically, they were patrolling Norfolk Street, a location which is subject of numerous community complaints of speeding, when they observed a potential traffic violation: driving without a front license plate. At that point, they the driver's race or skin color did not stand out. To confirm that a front license plate was necessary, the officers made a U-turn. Once they saw the rear license plate, they knew that the Defendant was driving in violation of Massachusetts law.

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[3] The benchmark considers the number of licensed drivers in relation to the number of people eligible for a driver's license rather than the number of people actually licensed.

[4] The area in question is not far from Milton. The analysis neither considers the influx of drivers from Milton into Mattapan/Dorchester nor drivers traveling through that neighborhood who live elsewhere.

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Upon considering the totality of circumstances, the Commonwealth proved by a preponderance of evidence, that this stop was not motivated by race. In addition, the actions occurring after the initial stop, once they learned that the Defendant did not have a valid license and had pulled over in a bus lane, were not motivated by race.

CONCLUSION

Accordingly, for the above reasons, the Court DENIES the motion to suppress.

So ordered,
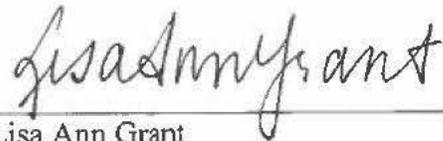
Lisa Ann Grant

Lisa Ann Grant
Associate Justice
Boston Municipal Court

Dated: January 26, 2023