

SJC DAR ___
2026-P-0107

Commonwealth of Massachusetts

Supreme Judicial Court

COMMONWEALTH

v.

ROBERT IRVING

APPLICATION FOR DIRECT APPELLATE REVIEW

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REQUEST FOR DIRECT APPELLATE REVIEW

Cell phones are “such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy.” *Riley v. California*, 573 U.S. 373, 385 (2014). But cell phones are more easily separated from their owners than anatomical appendages. “People lose or misplace cell phones all the time.” *United States v. Small*, 944 F.3d 490, 502 (4th Cir. 2019).

Mr. Irving lost his cell phone while hiking in a state park. Another hiker turned the cell phone in to the local police. One week later, the police determined that the cell phone belonged to Mr. Irving and left a voicemail message at a phone number associated with him telling him to come pick it up. The next day, the police deemed the cell phone abandoned and searched the phone’s data “for anything illegal or inappropriate,” without probable cause or reasonable suspicion, and without a judicial warrant.

The district court concluded that the warrantless search of Mr. Irving’s cell phone was lawful, because he had “abandoned” the phone and its data when he lost it in the park. That was error. Under the reasonable expectation of privacy test, abandonment is primarily a question of intent, and the objective facts in this case do not support an inference that Mr. Irving intended to abandon his cell

phone. The property-rights approach to art. 14 and Fourth Amendment focuses on the same critical question of intent and compels the same result.

The order below effectively concludes that cell phones discovered without their owners are abandoned as a matter of law. Adopting it would subject the millions of cell phones lost annually to suspicion-less searches, unauthorized (and unconstrained) by judicial oversight. Under that approach, the police could search every cell phone inadvertently separated from its owner for no reason, or any reason. Because the question presented in this appeal “concern[s] the Constitution[s] of the Commonwealth [and] of the United States,” and is “of such public interest that justice requires a final determination by the full Supreme Judicial Court,” Mass. R.A.P. 11(a), Mr. Irving respectfully requests direct appellate review.

PRIOR PROCEEDINGS

On February 16, 2021, Robert Irving was charged with one count of possession of child pornography in violation of G.L. c. 272, § 292C in Plymouth District Court. The charge stemmed from a warrantless search of Mr. Irvings’s cell phone, which had been turned in to the police after it was found in a park.

Mr. Irving moved to suppress “any and all evidence found as a result of the unlawful search of his cellular telephone on October 30.” The motion explained that on October 22, Mr. Irving “was hiking in Ellisville State Park when [he] lost

[his] cellular telephone.” One week later, the police “determined that the cellular phone belonged to Mr. Irving and allegedly placed a telephone call to Mr. Irving’s residence leaving a message on voicemail.” The next day, the police deemed the cellphone “abandoned,” and “unlawfully searched the cellular telephone” without probable cause, and without a warrant or any exception to the warrant requirement. The motion asserted that the supervising detective’s conclusion that the cell phone was “abandoned” in these circumstances was unsupported and unreasonable.

The court held an evidentiary hearing on the motion on February 21, 2023 (Smith, J.) and denied the motion on March 9, 2023. The motion judge concluded that “[w]hile this is a close call,” when the police examined the phone “for the purpose of seeing if there was anything illegal or inappropriate on [it],” the “phone had been abandoned for eight days.” Because, in the court’s view, “the cell phone was abandoned at the time of the examination by the police, the defendant had no reasonable expectation of privacy.”

Mr. Irving moved to reconsider on April 10, 2023. The court heard argument on the motion on May 25, 2023, and thereafter denied it in a margin order.

On June 17, 2025, Mr. Irving was convicted after a bench trial in the Plymouth District Court. (Peterson, J.) The court sentenced the defendant to two

and one half years in the House of Correction, with one year to serve, balance suspended.

The trial judge stayed the committed sentence pursuant to Mass. R. Crim. P. 31 pending the appeal. Judge Peterson observed that “the motion judge noted denial of the motion [to suppress] was a ‘close call,’” and concluded that the “pending appeal regarding the denial of the defendant’s motion to suppress . . . offers a ‘reasonable possibility of success.’”

Mr. Irving timely noticed his appeal. The appeal was entered in the Appeals Court on January 29, 2026.

STATEMENT OF THE FACTS

On October 22, 2020, a hiker “found [a cell] phone . . . near the walking trail,” in Ellisville State Park. In an effort “to locate the owner” and “to see who it belonged to,” the hiker opened the cell phone and viewed two photographs, depicting two adult men “engaged in consensual oral sex,” which she “deemed as disturbing.”

The hiker was unable to identify the cell phone’s owner, so she brought it to the Plymouth Police department that same day. Detective Kurt Saunders viewed the images identified by the hiker. He determined that there was no probable cause or reasonable suspicion that the cell phone contained evidence of a crime. The Plymouth Police “secured [the cell phone] as property.”

One week later, on October 29, Detective Saunders “was instructed by [his] detective lieutenant to try and help identify the property’s owner.” The detective opened the phone and “went on the Facebook app” which was connected to a profile for Jean Kershaw. Saunders found an address and a phone number for Kershaw in Sandwich. He called the phone number and left a voicemail message “that an electronic device was located in our town, she might want to come get it.” Thereafter, he contacted the Sandwich police “to see if they had any in-house information on Ms. Kershaw or possibly send somebody by her residence to alert her that her phone had been found.” The Sandwich police told him that Kershaw had passed away a year ago, and that Robert Irving was her next of kin.

Detective Saunders obtained Mr. Irving’s driver’s license photograph and compared it to the person in the images that he viewed when the cell phone was turned in. He “wanted to see if it was Mr. Irving, to see if it was his device.” The driver’s license photograph “appeared to match the person in the photo on the phone.” The detective called the number “associated with” Mr. Irving (which was the same number “associated to” Ms. Kershaw) and left a voicemail message stating: “I have something that belongs to you. You might want to come get it. It’ll be at the station.”

On October 30, “less than 24 hours” after that voicemail, Detective Saunders’ detective lieutenant instructed him to search the cell phone, without a

warrant, “for the purpose of seeing if there was anything illegal or inappropriate on” it. In the detective lieutenant’s view, the cell phone was “abandoned property.” At the time of the search, the cell phone had been held by the police for eight days. The search yielded images of child pornography.

ISSUE PRESENTED

Was the warrantless search of Mr. Irving’s cell phone unlawful under art. 14 and the Fourth Amendment, because he had not intentionally “abandoned” the phone and its data?

This issue was raised in Mr. Irving’s motion to suppress and is properly preserved for this Court’s review.

ARGUMENT

A. The warrantless search of Mr. Irving’s cell phone and its data violated reasonable expectations of privacy protected by art. 14 and the Fourth Amendment.

I. Courts must distinguish between lost and abandoned cell phones.

“Abandonment is primarily a question of intent.” *Commonwealth v. Perkins*, 465 Mass. 600, 606 (2013). To “abandon” a cell phone, its owner must “intend[] to permanently relinquish control” of it. *Id.* Intent is inferred from “words spoken, acts done, or other objective facts.” *Commonwealth v. Paszko*, 391 Mass. 164, 184 (1984). An objective view of the circumstances here lends no support to the conclusion that Mr. Irving intended to disown, dispose, or disclaim his cell phone.

After the police “identified the property’s owner” as Mr. Irving, Detective Saunders “called Mr. Irving and said, ‘I have something that belongs to you. You might want to come and get it.’” No more was required to meet Mr. Irving’s initial burden to establish a reasonable expectation of privacy. *Commonwealth v. Augustine*, 467 Mass. 230, 255 (2014).

The critical question is whether Mr. Irving’s privacy interest in his cell phone, and its data, is one that “society is prepared to recognize as reasonable.” *Id.* That depends ultimately on a normative judgement of “whether the particular form of surveillance” — here the unfettered examination of a cell phone lost in a public place for investigative purposes — is consistent “with the aims of a free and open society.” 1 W. LaFare, *Search and Seizure* § 2.1(d), citing Amsterdam, *Perspectives on the Fourth Amendment*, 58 Minn. L. Rev. 349, 350 (1974). And that turns on whether the facts support an inference that Mr. Irving “intended to permanently relinquish control” of his cell phone. *Perkins*, 465 Mass. at 606.

“Abandonment” is a poor fit for circumstances where cell phones are found separated from their owners. Courts authorize warrantless searches under the abandonment doctrine in “three general types” of circumstances, involving fleeing suspects, garbage, or denials. *United States v. Basinski*, 226 F.3d 829, 837 (7th Cir. 2000). Mr. Irving did not disown his cell phone while evading the police, he did not discard his cell phone in the trash, and he did not disclaim ownership. The

absence of these circumstances “strongly suggests that no abandonment occurred.” *Id.* at 83.

The abandonment doctrine is founded on the “integral relationship of one’s intent to the expectation of privacy.” *State v. Hamilton*, 314 Mont. 507, 515 (2003). Where lost property is “traditionally a repository for items of a private nature . . . there is no reason to think” that its owner “voluntarily discarded or abandoned” it. *Wolf v. State*, 291 Ga. App. 876, 878 (2008) (“no evidence that the loss of [the] wallet was either voluntary or knowing, or that it was anything but inadvertent”). The motion judge’s reliance on abandonment was a category error. Mr. Irving’s cell phone “was lost, not abandoned.” *Id.*

The “unique character of cell phones described in *Riley* is one factor that a trial court should consider when determining whether the owner has relinquished his expectation of privacy.” *State v. Brown*, 423 S.C. 519, 524 (2018). “That greater privacy interest stems from the vast quantity and intimate quality of the data collected.” *United States v. Hunt*, 153 F.4th 858, 866 (9th Cir. 2025). The upshot is that the conclusion that a cell phone’s owner intended to abandon the phone — and its data — “should be not casually inferred.” *Small*, 944 F.3d at 502. The objective facts here provide no support for the inference that Mr. Irving intended to abandon his cell phone and the data in it.

2. Mr. Irving did not abandon his cell phone when he lost it in the park.

A cell phone “that is lost, dropped, or misplaced is not ownerless, and the owner retains the protections of the Fourth Amendment.” *State v. Valles*, 925 N.W.2d 404, 408 (N.D. 2019). None of the factors cited by the motion judge support an inference that Mr. Irving intended to abandon the cell phone and forfeit art. 14 and Fourth Amendment protections against government searches of his data.

Ownership interest. The police “identified the [cell phone’s] owner” as Mr. Irving. The police’s actions thus “showed [they] believed the phone still had a rightful owner and was thus lost, not abandoned.” *Valles*, 925 N.W.2d at 409. This comports with the objective reasonableness that is the touchstone of art. 14 and the Fourth Amendment. But the motion judge’s analysis gave that fact no weight.

Location. Where courts have concluded that a cell phone is “abandoned” based on the “nature of the place,” the typical scenario is a public crime scene, see, e.g., *People v. Dagg*, 133 Cal. App.4th 361, 365 (2005); or crime scene where the defendant (the cell phone’s owner) is trespassing. *State v. Brown*, 414 S.C. 14, 26 (S.C. App. 2015). Ellisville State Park is not a crime scene. *Valles*, 925 N.W. 2d at 408 (“parking lot was [not] a crime scene”). And Mr. Irving did not drop his cell phone in someone else’s yard. *Commonwealth v. Carnes*, 81 Mass. App. Ct. 713, 714 (2012).

Duration of separation from owner. Detective Saunders determined that, as of October 29, the cell phone “belong[ed] to” Mr. Irving, which is why he left a

message on a “home phone number” “associated to” him on that day, telling to “come and get it.” The Plymouth Police’s objectively reasonable assessment of the phone’s ownership thus undermines the motion judge’s conclusion that the cell phone was “abandoned” seven days earlier, when Mr. Irving lost it in the park

Efforts to retrieve. The motion judge considered it significant that “no one contacted the police for the first seven days [the cell phone] was in . . . custody.” But the implication that the owner of a lost phone must report it to the police or forfeit constitutional protections in its contents is unreasonable. *Valles*, 925 N.W.2d at 409 (“We cannot say . . . whether it is common for a person who has lost a cell phone to report the loss to the police”). Cf. *Hunt*, 135 F.4th at 868 (defendant had no reason to suspect that police had cell phone).

Passcode protection. In the motion judge’s view, that fact the cell phone was “unlocked” detracted from a reasonable expectation of privacy against police searches. But many people, like Mr. Irving, do not secure their cell phones with a passcode. That does not mean that their expectation of privacy in the contents of their cell phones is socially unreasonable. “Cell phones are intrinsically private, and the failure to password protect access to them is not an invitation for others to snoop.” *State v. Peoples*, 240 Ariz. 244, 248-249 (2016). Locks have never been prerequisites for constitutional protection of closed containers. The “failure to lock [a] suitcase” does not “alter its fundamental character as a repository of

personal, private effects,” protected against warrantless government intrusion by the Fourth Amendment. *Arkansas v. Sanders*, 442 U.S. 753, 762 n.9 (1979), *abrogated on other grounds by California v. Acevedo*, 500 U.S. 565 (1991). The same is true for cell phones, which “implicate privacy concerns far beyond those implicated by the search,” of ordinary containers. *Riley*, 573 U.S. at 393.

B. The warrantless search of Mr. Irving’s cell phone and its data infringed on his art. 14 and Fourth Amendment property interests in his possessions, papers, and effects.

The independent property-rights approach to art. 14 and the Fourth Amendment compels the same result. In *United States v. Jones*, the Supreme Court explained that the Fourth Amendment “*at a minimum*” protects against “government trespass upon the areas (‘persons, houses, papers, and effects’) it enumerates.” 565 U.S. 400, 404, 406, 411 (2012) (emphasis in original). *Commonwealth v. Connolly*, 454 Mass. 808, 822 (2009) (intrusion on vehicle under art. 14).

A cell phone is an “effect” (Fourth Amendment) and a “possession” (art. 14). And the digital contents of cell phones are “papers” under the original understanding of art. 14 and the Fourth Amendment. Ferguson, *The ‘Smart’ Fourth Amendment*, 102 Cornell L. Rev. 547, 596-598 (2017). Such “papers,” of course, “are often the dearest property man can have.” *Entick v. Carrington*, 95 Eng. Rep. 807

(C.P. 1765). Art. 14 and the Fourth Amendment thus protected Mr. Irving's interest in the cell phone against government intrusion.

Like the reasonable expectation of privacy test set out above, the owner's intent is the critical issue in the abandoned property context. Cf. *Florida v. Jardines*, 569 U.S. 1, 14 (2013) (Kagan, J., concurring) (intuitions about socially reasonable expectations of privacy originate in property law). Property is abandoned when the owner intentionally relinquishes possession and rights in the property. 1 Am. Jur. 2d, Abandoned, Lost, and Unclaimed Property, § 10. But lost property is not abandoned under the common law. See *Jones*, 565 U.S. at 404-405 (common law of trespass). At common law, property was lost when the owner unwittingly parted with it and did not know its location. 1 Am. Jur. 2d, Abandoned, Lost, and Unclaimed Property, § 13. The loss of property is involuntary, while abandonment requires intent.

This distinction has deep roots. The finder of lost property holds it as a bailee for the true owner. Laidlaw, *Principles of Bailment*, 16 Cornell L. Q. 286, 293-294 (1931) (finder of lost property is a gratuitous bailee). See *McAvoy v. Medina*, 93 Mass. 548, 549 (1866) ("finder of lost property has a valid claim to the same against all the world except the true owner"). The purpose of the common law is to protect the interests of the lost property's owner, and to extent possible, reunite him with

his possessions, papers, or effects. Riesman, *Possession and the Law of Finders*, 52 Harv. L. Rev. 1105, 1122 (1939).¹

Mr. Irving did not forfeit his property interest in his cell phone when he inadvertently lost it on the hiking trail. Because the warrantless investigative search of his cell phone intruded on possessory interests protected by art. 14 and the Fourth Amendment, the motion to suppress should have been allowed.

REASONS WHY DIRECT REVIEW IS APPROPRIATE

The constitutionally untenable consequences of the motion judge’s approach for the millions of cell phones lost annually are stark. Searches conducted pursuant to lawfully issued warrants must be supported by probable cause, subject to “detached scrutiny by a neutral magistrate,” and conform to “precise limits established in advance.” *Katz v. United States*, 389 U.S. 347, 356 (1967). But if lost cell phones are deemed abandoned, none of these rules apply. Law enforcement could extract — as a matter of discretion or policy — all the data of each lost or misplaced cell phone. It could do so without probable cause, judicial oversight, or any limitation.

¹Massachusetts statutory law, which can be traced to the colonial era, St. 1698, c.9, § 1, underscores that owners of lost property retain possessory interests. See G.L. c. 134, § 1, St. 1698, c.9, § 1 (“person who finds lost money or goods . . . the owner of which is unknown, shall within two days report the finding [to police] or . . . cause notice thereof to be advertised”); G.L. c. 134, § 4, St. 1788, c.55, § 3 (“If the owner of lost money or goods does not appear within one year . . . they shall enure to the finder, provided he has complied with [§1]”).

On this view, for example, nothing would prevent the MBTA Police Department from establishing cell phone extraction posts at the “lost property stockrooms” located in Boston’s North and South Stations, where the police could download all the data from cell phones left behind on trains, trolleys, ferries, and buses, after some arbitrary waiting period, “for the purpose of seeing if there was anything illegal or inappropriate on” them.² See *Commonwealth v. Cronin*, 495 Mass. 170, 173-174 (2025) (describing extraction).

What’s more, such “abandoned” cell phone searches would not be subject to constitutional limits. “The Fourth Amendment, art. 14, and G.L. c. 276, § 2, require that a search warrant describe with particularity the places to be searched and the items to be seized.” *Commonwealth v. Holley*, 478 Mass. 508, 524 (2017). Particularity is important in the cell phone context because, “a search of its many files must be done with special care and satisfy a more narrow and demanding standard.” *Id.* But “abandoned” cell phone searches — like the search of Mr. Irving’s cell phone — would be unrestrained by the particularity requirement imposed by the state and federal constitutions.

The power to scour the private data in lost cell phones, without a showing of probable cause to a neutral magistrate, is repugnant to the twin goals of

²MBTA, Lost and Found, <https://www.mbta.com/customer-support/lost-and-found>.

protecting “the privacies of life against arbitrary power” and “plac[ing] an obstacle in the way of too permeating police surveillance.” *Carpenter v. United States*, 585 U.S. 296, 305 (2018). That is the power that the Commonwealth claims here, when a cell phone is inadvertently separated from its owner. In the absence of guidance from this Court, misapplication of the abandonment doctrine to lost cell phones threatens to undermine constitutional protections for the privacies of life in the digital age.

CONCLUSION

For the reasons explained above, Mr. Irving requests that direct appellate review be allowed. Respectfully submitted,

ROBERT IRVING
By his attorney,
/s/ Matthew Spurlock
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May 6, 2026

APPENDIX

2159CR000224 Commonwealth vs. Irving, Robert R

- Case Type:
- Criminal
- Case Status:
- Open
- File Date
- 02/16/2021
- DCM Track:
-
- Initiating Action:
- CHILD PORNOGRAPHY, POSSESS c272 §29C
- Status Date:
- 02/16/2021
- Case Judge:
-
- Next Event:
- 01/30/2026

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

Party Information

Irving, Robert R
- Defendant

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Party Charge Information

- **Irving, Robert R**
- - Defendant
- **Charge # 1:**
272/29C/A-1 - Felony CHILD PORNOGRAPHY, POSSESS c272 §29C

- Original Charge
 - 272/29C/A-1 CHILD PORNOGRAPHY, POSSESS c272 §29C (Felony)
- Amended Charge
-

Charge Disposition

Disposition Date

Disposition

06/17/2025

Guilty - Bench Finding

Events

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Result</u>
03/12/2021 08:30 AM	Arraignment Session		Arraignment	Held - Personal Recog. Release
03/23/2021 09:00 AM	Virtual Court Session		Pretrial Hearing	Reschedule of Hearing
04/22/2021 10:00 AM	Plymouth Mental Health Session		Hearing to Review Status	Event Cancelled
05/20/2021 10:00 AM	Plymouth Mental Health Session		Treatment Plan Review - Specialty Court	Rescheduled
06/22/2021 10:00 AM	Plymouth Mental Health Session		Treatment Plan Review - Specialty Court	Canceled
08/04/2021 09:00 AM	Pretrial Session		Pretrial Hearing	Held
09/15/2021 09:00 AM	Virtual Court Session		Discovery Compliance & Jury Election	Reschedule of Hearing
11/26/2021 01:00 PM	Arraignment Session		Motion to Continue	Held - Motion allowed
12/01/2021 09:00 AM	Pretrial Session		Discovery Compliance & Jury Election	Event Cancelled
01/25/2022 09:00 AM	Pretrial Session		Discovery Compliance & Jury Election	Reschedule of Hearing
03/03/2022 09:00 AM	Motion Session		Motion to suppress	Event Cancelled
05/19/2022 09:00 AM	Motion Session		Motion to suppress	Reschedule of Hearing
06/15/2022 09:00 AM	Motion Session		Motion to suppress	Reschedule of Hearing
08/03/2022 09:00 AM	Motion Session		Motion Hearing (CR)	Reschedule of Hearing
10/25/2022 09:00 AM	Motion Session		Motion to suppress	Reschedule of Hearing
11/29/2022 09:00 AM	Motion Session		Motion to Continue	Held - Motion allowed
12/06/2022 09:00 AM	Motion Session		Motion to suppress	Event Cancelled
01/25/2023 09:00 AM	Motion Session		Motion Hearing (CR)	Reschedule of Hearing
02/21/2023 09:00 AM	Pretrial Session		Pretrial Hearing	Reschedule of Hearing
03/31/2023 09:00 AM	Pretrial Session		Hearing to Review Status	Review Completed
04/28/2023 09:00 AM	Pretrial Session		Hearing to Review Status	Review Completed
05/25/2023 09:00 AM	Pretrial Session		Hearing to Review Status	Reschedule of Hearing



2I

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Result</u>
06/20/2023 09:00 AM	Pretrial Session		Hearing to Review Status	Reschedule of Hearing
08/15/2023 09:00 AM	Pretrial Session		Hearing to Review Status	Reschedule of Hearing
10/03/2023 09:00 AM	Pretrial Session		Hearing to Review Status	Reschedule of Hearing
11/28/2023 09:00 AM	Arraignment Session		Motion to Continue	Held - Motion allowed
12/01/2023 09:00 AM	Pretrial Session		Hearing to Review Status	Event Cancelled
12/20/2023 09:00 AM	Pretrial Session		Hearing to Review Status	Reschedule of Hearing
01/17/2024 09:00 AM	Pretrial Session		Hearing to Review Status	Reschedule of Hearing
02/29/2024 09:00 AM	Pretrial Session		Hearing to Review Status	Reschedule of Hearing
05/16/2024 09:00 AM	Pretrial Session		Hearing to Review Status	Reschedule of Hearing
07/24/2024 09:00 AM	Pretrial Session		Hearing to Review Status	Reschedule of Hearing
10/01/2024 09:00 AM	Pretrial Session		Trial Readiness Conference	Reschedule of Hearing
11/20/2024 09:00 AM	Pretrial Session		Trial Readiness Conference	Reschedule of Hearing
01/16/2025 09:00 AM	Pretrial Session		Trial Readiness Conference	Reschedule of Hearing
02/07/2025 09:00 AM	Pretrial Session		Trial Readiness Conference	Held
04/02/2025 03:30 PM	Motion Session		Motion to Continue	Held - Motion allowed
04/16/2025 09:00 AM	Trial Session (Plymouth)		Jury Trial (CR)	Event Cancelled
06/17/2025 09:00 AM	Trial Session (Plymouth)		Jury Trial (CR)	Not Held-Disposed by Bench Trial
06/18/2025 09:00 AM	Pretrial Session		Sentence Hearing	Held
07/18/2025 09:00 AM	Pretrial Session		Hearing to Review Status	Reschedule of Hearing
07/28/2025 09:15 AM	Arraignment Session		Judge In Camera Review-MH Petn	Held
08/12/2025 09:00 AM	Pretrial Session		Sentence Hearing	Held
08/18/2025 01:15 PM	Arraignment Session		Probation exparte review hear	Not Held
08/18/2025 02:00 PM	Motion Session		Motion Hearing (CR)	Held - Motion allowed
10/06/2025 12:00 PM	Motion Session		Motion Hearing (CR)	Held - Motion allowed
12/08/2025 08:30 AM	Arraignment Session		Probation Violation Hearing	Reschedule of Hearing
01/30/2026 09:00 AM	Arraignment Session		Probation Violation Hearing	

22

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Result</u>
08/11/2027 09:00 AM	Administrative Session		Probation Until	



Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>Image Avail.</u>
02/16/2021	Criminal Complaint issued from Electronic Application: Originating Court: Plymouth District Court Case Number: 2159AC000211- Receiving Court: Plymouth District Court ;	
02/16/2021	Complaint issued with a summons.	
02/16/2021	Statement of facts filed.	
03/12/2021	Appearance filed On this date Maureen K Crowley, Esq. added as Appointed - Able to Contribute for Defendant Robert R Irving Appearance filed for the purpose of Case in Chief by Judge Hon. Franco J Gobourne.	Image
03/12/2021	Event Resulted: Arraignment scheduled on: 03/12/2021 08:30 AM Has been: Held - Personal Recog. Release Hon. Franco J Gobourne, Presiding	
03/12/2021	Defendant arraigned before Court, advised of right to counsel. Judge: Gobourne, Hon. Franco J	
03/12/2021	Plea of Not Guilty entered on all charges. Judge: Gobourne, Hon. Franco J	
03/12/2021	Bail revocation warning (276/58) given to the defendant Judge: Gobourne, Hon. Franco J	
03/12/2021	Release on personal recognizance with pre-trial conditions, to wit: Stay away from court ordered location Any schools. Stay away & no contact with persons under 18. Judge: Gobourne, Hon. Franco J	
03/22/2021	Order of pretrial conditions of release under G.L. c.276 § 87 filed. Judge: Gobourne, Hon. Franco J	 Image
03/23/2021	Event Resulted: Pretrial Hearing scheduled on: 03/23/2021 09:00 AM Has been: Reschedule of Hearing For the following reason: Additional time allowed to complete conditions Hon. James M Sullivan, Presiding	
04/16/2021	Event Resulted: Hearing to Review Status scheduled on: 04/22/2021 10:00 AM Has been: Event Cancelled For the following reason: Brought forward Hon. James M Sullivan, Presiding	
05/20/2021	Event update:: Treatment Plan Review - Specialty Court scheduled on: 05/20/2021 10:00 AM Has been: Rescheduled For the following reason: On Order of the Court Hon. James M Sullivan, Presiding	
06/16/2021	Event update:: Treatment Plan Review - Specialty Court scheduled on: 06/22/2021 10:00 AM Has been: Canceled For the following reason: Brought forward Hon. James M Sullivan, Presiding	



<u>Docket Date</u>	<u>Docket Text</u>	<u>Image Avail.</u>
08/04/2021	Event Resulted: Pretrial Hearing scheduled on: 08/04/2021 09:00 AM Has been: Held Hon. Franco J Gobourne, Presiding	
09/15/2021	Event Resulted: Discovery Compliance & Jury Election scheduled on: 09/15/2021 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. John A Canavan, III, Presiding	
11/26/2021	Event Resulted: Discovery Compliance & Jury Election scheduled on: 12/01/2021 09:00 AM Has been: Event Cancelled For the following reason: Brought forward Hon. James M Sullivan, Presiding	
11/26/2021	Defendant's motion to reschedule or continue scheduled court hearing filed with the following, if any, supporting documents:	 Image
11/26/2021	Event Resulted: Motion to Continue scheduled on: 11/26/2021 01:00 PM Has been: Held - Motion allowed Hon. James M Sullivan, Presiding	
11/26/2021	Motion to reschedule or continue scheduled court hearing ALLOWED. Attorney: Crowley, Esq., Maureen K	 Image
01/25/2022	Event Resulted: Discovery Compliance & Jury Election scheduled on: 01/25/2022 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Franco J Gobourne, Presiding	
03/01/2022	Event Resulted: Motion to suppress scheduled on: 03/03/2022 09:00 AM Has been: Event Cancelled For the following reason: Brought forward Ann Marie Lyons, Presiding	
05/19/2022	Event Resulted: Motion to suppress scheduled on: 05/19/2022 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. John A Canavan, III, Presiding	
06/02/2022	Defendant's motion to Suppress filed with the following, if any, supporting documents: affidavit in support of motion	 Image
06/13/2022	Event Resulted: Motion to suppress scheduled on: 06/15/2022 09:00 AM Has been: Reschedule of Hearing For the following reason: Brought forward Comments: ADMIN Brendan Barnes, Presiding	
08/01/2022	Event Resulted: Motion Hearing (CR) scheduled on: 08/03/2022 09:00 AM Has been: Reschedule of Hearing For the following reason: Both Parties Request Adam J Baler, Presiding	
10/19/2022	Event Resulted: Motion to suppress scheduled on: 10/25/2022 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. John A Canavan, III, Presiding	
11/28/2022	Event Resulted: Motion to suppress scheduled on: 12/06/2022 09:00 AM Has been: Event Cancelled For the following reason: Brought forward Hon. James M Sullivan, Presiding	
11/29/2022	Event Resulted: Motion to Continue scheduled on: 11/29/2022 09:00 AM Has been: Held - Motion allowed Hon. Franco J Gobourne, Presiding	
11/29/2022	Motion to reschedule or continue scheduled court hearing ALLOWED.	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>Image Avail.</u>
01/24/2023	Event Resulted: Motion Hearing (CR) scheduled on: 01/25/2023 09:00 AM Has been: Reschedule of Hearing For the following reason: Defendant's counsel ill Comments: ADMIN Brendan Barnes, Presiding	
01/24/2023	Defendant's motion to reschedule or continue scheduled court hearing filed and ALLOWED.	 Image
02/21/2023	Event Resulted: Pretrial Hearing scheduled on: 02/21/2023 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Shelby M Smith, Presiding	 Image
03/09/2023	Defendant's motion to Suppress DENIED, Smith, J filed with the following, if any, supporting documents:	 Image
03/31/2023	Event Resulted: Hearing to Review Status scheduled on: 03/31/2023 09:00 AM Has been: Review Completed Hon. Julie J Bernard, Presiding	 Image
04/10/2023	Defendant's motion to reconsider prior ruling denial of motion to suppress filed with the following, if any, supporting documents:	
04/10/2023	Defendant's motion to reconsider prior ruling Denial of Motion to Suppress filed with the following, if any, supporting documents:	 Image
04/25/2023	Event Resulted: Hearing to Review Status scheduled on: 04/28/2023 09:00 AM Has been: Review Completed For the following reason: On Order of the Court Hon. John A Canavan, III, Presiding	
05/25/2023	Event Resulted: Hearing to Review Status scheduled on: 05/25/2023 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Shelby M Smith, Presiding	
05/25/2023	Motion to reconsider prior ruling DENIED.	 Image
06/20/2023	Event Resulted: Hearing to Review Status scheduled on: 06/20/2023 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Scott D Peterson, Presiding	 Image
08/15/2023	Event Resulted: Hearing to Review Status scheduled on: 08/15/2023 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. John A Canavan, III, Presiding	
10/03/2023	Event Resulted: Hearing to Review Status scheduled on: 10/03/2023 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Shelby M Smith, Presiding	
11/27/2023	Event Resulted: Hearing to Review Status scheduled on: 12/01/2023 09:00 AM Has been: Event Cancelled For the following reason: Brought forward Hon. Shelby M Smith, Presiding	
11/28/2023	Event Resulted: Motion to Continue scheduled on: 11/28/2023 09:00 AM Has been: Held - Motion allowed Hon. Thomas S Barrett, Presiding	
12/20/2023	Event Resulted: Hearing to Review Status scheduled on: 12/20/2023 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Kristen A Stone, Presiding	
01/17/2024	Event Resulted: Hearing to Review Status scheduled on: 01/17/2024 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Shelby M Smith, Presiding	

<u>Docket Date</u>	<u>Docket Text</u>	<u>Image Avail.</u>
02/29/2024	Event Resulted: Hearing to Review Status scheduled on: 02/29/2024 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Shelby M Smith, Presiding	
02/29/2024	Defendant's presence excused. For hearing on 05/16/2024 Judge: Smith, Hon. Shelby M	
05/16/2024	Event Resulted: Hearing to Review Status scheduled on: 05/16/2024 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Shelby M Smith, Presiding	
07/24/2024	Event Resulted: Hearing to Review Status scheduled on: 07/24/2024 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Shelby M Smith, Presiding	
10/01/2024	Event Resulted: Trial Readiness Conference scheduled on: 10/01/2024 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Shelby M Smith, Presiding	
11/20/2024	Event Resulted: Trial Readiness Conference scheduled on: 11/20/2024 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Julie J Bernard, Presiding	
01/16/2025	Event Resulted: Trial Readiness Conference scheduled on: 01/16/2025 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. John A Canavan, III, Presiding	
02/07/2025	Event Resulted: Trial Readiness Conference scheduled on: 02/07/2025 09:00 AM Has been: Held Hon. Edward Krippendorf, Presiding	
02/07/2025	Event Scheduled Event: Jury Trial (CR) Date: 04/16/2025 Time: 09:00 AM Result: Event Cancelled	
02/07/2025	Pretrial conference report filed. Judge: Krippendorf, Hon. Edward	 Image
04/02/2025	Commonwealth's motion to reschedule or continue scheduled court hearing filed with the following, if any, supporting documents:	 Image
04/02/2025	Event Resulted: Motion to Continue scheduled on: 04/02/2025 03:30 PM Has been: Held - Motion allowed Hon. Scott D Peterson, Presiding	
04/02/2025	Motion to reschedule or continue scheduled court hearing ALLOWED.	 Image
04/14/2025	Event Resulted: Jury Trial (CR) scheduled on: 04/16/2025 09:00 AM Has been: Event Cancelled For the following reason: Brought forward Hon. Shelby M Smith, Presiding	 Image
04/14/2025	Event Scheduled Event: Jury Trial (CR) Date: 06/17/2025 Time: 09:00 AM Result: Not Held-Disposed by Bench Trial	
06/17/2025	Event Resulted: Jury Trial (CR) scheduled on: 06/17/2025 09:00 AM Has been: Not Held-Disposed by Bench Trial Hon. Scott D Peterson, Presiding	

<u>Docket Date</u>	<u>Docket Text</u>	<u>Image Avail.</u>
06/17/2025	Charges Disposed:: Charge # 1 CHILD PORNOGRAPHY, POSSESS c272 §29C On: 06/17/2025 Judge: Hon. Scott D Peterson Guilty - Bench Finding	
06/17/2025	Order for examination of defendant to aid the court in sentencing issued pursuant to G.L. 123, § 15(e): 06/17/2025 09:00 AM Jury Trial (CR) Judge: Peterson, Hon. Scott D	
06/17/2025	Defendant is ordered committed without bail because OTHER REASON: to Plymouth County House of Correction returnable for 06/18/2025 09:00 AM Sentence Hearing; mittimus issued. Court location of next event (if not this court): Further Orders: Defendant To Be Transported Judge: Peterson, Hon. Scott D	
06/17/2025	Notice of appeal to the Appeals Court filed by the Defendant Judge: Peterson, Hon. Scott D	 Image
06/17/2025	Defendant's motion to stay sentencing and requirement to register with the sex offender registry pending appeal of the denial of the defendant's Motion to Suppress, filed with the following, if any, supporting documents: Judge: Peterson, Hon. Scott D	 Image
06/18/2025	Event Resulted: Sentence Hearing scheduled on: 06/18/2025 09:00 AM Has been: Held Hon. Scott D Peterson, Presiding	
06/18/2025	Defendant is ordered committed without bail because OTHER REASON: to Plymouth County House of Correction returnable for 07/18/2025 09:00 AM Hearing to Review Status; mittimus issued. Court location of next event (if not this court): Further Orders: DEF AT BRIDGEWATER STATE Judge: Peterson, Hon. Scott D	
06/18/2025	Order for examination and hospitalization of defendant to aid the court in sentencing issued to Bridgewater State Hospital pursuant to G.L.c. 123, s. 15(e) returnable 07/18/2025 09:00 AM Hearing to Review Status. Judge: Peterson, Hon. Scott D	
07/18/2025	Event Resulted: Hearing to Review Status scheduled on: 07/18/2025 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Scott D Peterson, Presiding	
07/18/2025	Defendant is ordered committed without bail because OTHER REASON: to Plymouth County House of Correction returnable for 08/12/2025 09:00 AM Sentence Hearing; mittimus issued. Court location of next event (if not this court): Further Orders: PLEASE TRANSPORT Judge: Peterson, Hon. Scott D	
07/28/2025	Petition filed by Robert Irving for Transfer of pre-trial detainee prisoner Robert R Irving to a mental health treatment facility under G.L. c. 123 s.18(a½). Prisoner presently detained at the Plymouth County House of Correction on this case and case dockets none.	
07/28/2025	Petition has been filed with this court by petitioner who is	
07/28/2025	Petition has been filed with this court by petitioner Robert Irving who is Named Prisoner	

Docket Date	Docket Text	Image Avail.
07/28/2025	Event Scheduled Event: Judge In Camera Review-MH Petn Date: 07/28/2025 Time: 09:15 AM Result: Held	
07/28/2025	Event Resulted: Judge In Camera Review-MH Petn scheduled on: 07/28/2025 09:15 AM Has been: Held Hon. Edward Krippendorf, Presiding	
07/28/2025	Habeas Corpus for prosecution issued to Bridgewater State Hospital returnable for 08/12/2025 09:00 AM Sentence Hearing: Further Orders: DEF MUST APPEAR FOR THIS MATTER Judge: Krippendorf, Hon. Edward	
08/04/2025	Habeas Corpus for prosecution issued to Plymouth County House of Correction returnable for 08/12/2025 09:00 AM Sentence Hearing: Further Orders: TO BE HEARD IN PERSON Judge: Smith, Hon. Shelby M	
08/12/2025	Event Resulted: Sentence Hearing scheduled on: 08/12/2025 09:00 AM Has been: Held Hon. Scott D Peterson, Presiding DEF SENTENCED TO 2 1/2 YEARS HOC, 1 YR TO SERVE, BALANCE SUSPENDED FOR 2 YEARS- SENTENCE STAYED UNTIL FINAL DECISION FROM APPELLATE COURT	
08/12/2025	Motion to stay execution of sentence allowed in part.	
08/13/2025	Probation order of conditions imposed or revised Judge: Peterson, Hon. Scott D	 
08/18/2025	Probation Officer's motion to request the court allow the Probation Dept. to inspect/copy of 15(e) evaluation completed at Bridgewater State Hospital. filed with the following, if any, supporting documents:	 
08/18/2025	Event Resulted: Probation exparte review hear scheduled on: 08/18/2025 01:15 PM Has been: Not Held For the following reason: Clerical scheduling error Hon. Scott D Peterson, Presiding	
08/18/2025	Event Resulted: Motion Hearing (CR) scheduled on: 08/18/2025 02:00 PM Has been: Held - Motion allowed Hon. Scott D Peterson, Presiding	
08/18/2025	Probation Officer's motion to Copy and inspect 15E Evaluation filed and ALLOWED.	
08/19/2025	Notice of appeal to the Appeals Court filed by the Defendant	 
10/06/2025	Defendant's motion to Modify Conditions filed with the following, if any, supporting documents:	 
10/06/2025	Event Resulted: Motion Hearing (CR) scheduled on: 10/06/2025 12:00 PM Has been: Held - Motion allowed Hon. Scott D Peterson, Presiding	
10/06/2025	's motion filed and ALLOWED. Judge: Peterson, Hon. Scott D	
10/06/2025	Defendant's motion to modify conditions filed and ALLOWED.	
11/14/2025	Appearance filed On this date Maureen K Crowley, Esq. dismissed/withdrawn as Appointed - Able to Contribute for Defendant Robert R Irving	

<u>Docket Date</u>	<i>Docket Text</i>	<i>Image Avail.</i>
11/14/2025	Appearance filed On this date Matthew D Spurlock, Esq. added as Appointed - Indigent Defendant for Defendant Robert R Irving Appearance filed for the purpose of Case in Chief by Judge Hon. Shelby M Smith.	
11/20/2025	Probation Violation Notice filed with notice of scheduled hearing date and certificate that service to be completed in hand or by mail on the defendant.	 Image
12/08/2025	Event Resulted: Probation Violation Hearing scheduled on: 12/08/2025 08:30 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Shelby M Smith, Presiding	
12/08/2025	Appearance filed On this date Timothy A Shyne, Esq. added as Appointed - Indigent Defendant for Defendant Robert R Irving Appearance filed for the purpose of Probation Violation Hearing by Judge Hon. Shelby M Smith.	
12/08/2025	Probable Cause found for probation violation. Judge: Smith, Hon. Shelby M	
12/08/2025	Probation Detention Hearing Finding and Order filed. Defendant to be released until final probation violation hearing. Judge: Smith, Hon. Shelby M	 Image
12/08/2025	Notice of Probation detention hearing for alleged violation of probation served and filed with court Judge: Smith, Hon. Shelby M	 Image

Case Disposition

<u>Disposition</u>	<u>Date</u>
Disposed by Bench Trial	06/17/2025

CRIMINAL DOCKET		DOCKET NUMBER 2159CR000224	NO. OF COUNTS 1	Trial Court of Massachusetts District Court Department	
DEFENDANT NAME AND ADDRESS Robert R Irving 9 Liberty Street Sandwich, MA 02563		DOB 04/11/1958	GENDER Male	COURT NAME & ADDRESS Plymouth District Court 52 Obery Street Plymouth, MA 02360	
		DATE COMPLAINT ISSUED 02/16/2021			INTERPRETER REQUIRED
		PRECOMPLAINT ARREST DATE			
FIRST FIVE OFFENSE COUNTS					
COUNT	CODE	OFFENSE DESCRIPTION			OFFENSE DATE
1	272/29C/A	CHILD PORNOGRAPHY, POSSESS c272 §29C			10/22/2020
DEFENSE ATTORNEY Crowley		OFFENSE CITY/TOWN Plymouth		POLICE DEPARTMENT Plymouth PD	
DATE & JUDGE	DOCKET ENTRY		DATE & JUDGE	FEES IMPOSED	
MAR 12 2021 Gobourne	<input checked="" type="checkbox"/> Attorney appointed (SJC R. 3:10) <input type="checkbox"/> Atty denied & Deft. Advised per 211 D §2A <input type="checkbox"/> Waiver of Counsel found after colloquy		MAR 12 2021	Counsel Fee (211D § 2A(2)) <input type="checkbox"/> WAIVED \$ 150	
	Terms of release set: <input checked="" type="checkbox"/> PR <input type="checkbox"/> Bail <input checked="" type="checkbox"/> See Docket for special condition <input type="checkbox"/> Held (276 §58A)			Counsel Contribution (211D § 2) <input type="checkbox"/> WAIVED \$	
MAR 12 2021 Gobourne	Arraigned and advised: <input checked="" type="checkbox"/> Potential of bail revocation (276 §58B) <input type="checkbox"/> Right to bail to review (276 §58) <input type="checkbox"/> Right to drug exam (111E § 10) <input type="checkbox"/> Inquiry made by Court under 276 § 56A		6-17-25 Canavan	Default Warrant Fee (276 § 30(1)) <input type="checkbox"/> WAIVED \$	
	Abuse Allegation: <input type="checkbox"/> C276 § 56A form filed by Commonwealth <input type="checkbox"/> Allegation of abuse under C276 § 56A found <input type="checkbox"/> No allegation of abuse under C276 § 56A found			Default Warrant Arrest Fee (276 § 30(2)) <input type="checkbox"/> WAIVED \$	
				Probation Supervision Fee (276 § 87A) <input type="checkbox"/> WAIVED \$	
				Bail Order Forfeited	
				Advised of right to jury trial: <input checked="" type="checkbox"/> Waiver of jury found after colloquy <input type="checkbox"/> Does not waive	
				Advised of trial rights as pro se (Dist. Ct. Supp.R.4)	
				Advised of right of appeal to Appeals Ct. (M.R. Crim P.R. 28)	
SCHEDULING HISTORY					
NO.	SCHEDULED DATE	EVENT	RESULT	JUDGE	TAPE START/ STOP
1	03/12/2021	Arraignment	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	Gobourne	
2	3-23-21	PTD	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	Zoom	
3	4-22-21	PTH	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	Sullivan	
4	B/F Cont to		<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
5	5-20-21	MH	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	Sullivan	C-10:49
6	Both Parties		<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	Sullivan	
7	C/S		<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
8	6/22/2021	MH CT	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	Sullivan	
9	6/30/21	SR	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	Bernard	A 9:40
10	4-28-23	SR	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
APPROVED ABBREVIATIONS ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance-without-finding scheduled to terminate PRO = Probation scheduled to terminate DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = probation revocation hearing					
A TRUE COPY ATTEST:		CLERK-MAGISTRATE / ASST CLERK X		TOTAL NO. OF PAGES	ON (DATE)



CRIMINAL DOCKET - OFFENSES		DEFENDANT NAME Robert R Irving			DOCKET NUMBER 2159CR000224	
COUNT / OFFENSE 1 CHILD PORNOGRAPHY, POSSESS c272 §29C				DISPOSITION DATE AND JUDGE 6/17/25 Refe Jan		
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 <input checked="" type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
		HEAD INJURY ASMT	RESTITUTION	VW ASSESSMENT	BATTERER'S FEE	OTHER
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:				
FINDING <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)			JUDGE	DATE
COUNT / OFFENSE				DISPOSITION DATE AND JUDGE		
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
		HEAD INJURY ASMT	RESTITUTION	VW ASSESSMENT	BATTERER'S FEE	OTHER
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:				
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)			JUDGE	DATE
COUNT / OFFENSE				DISPOSITION DATE AND JUDGE		
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
		HEAD INJURY ASMT	RESTITUTION	VW ASSESSMENT	BATTERER'S FEE	OTHER
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:				
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)			JUDGE	DATE
COUNT / OFFENSE				DISPOSITION DATE AND JUDGE		
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
		HEAD INJURY ASMT	RESTITUTION	VW ASSESSMENT	BATTERER'S FEE	OTHER
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:				
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)			JUDGE	DATE



CRIMINAL DOCKET DOCKET ENTRIES	DEFENDANT NAME Robert R Irving	DOCKET NUMBER 2159CR000224
DATE	DOCKET ENTRIES	
MAR 12 2021	COP: Stay away & no contact w/ persons under 18 y.o., EA. any elementary, middle and high schools Suburban	
5/20/2021	CUMC 10:48 SULLIVAN	
	CASE CONTINUED TO 6/22/2021 IN MH SESSION SIMMONS TO ISSUE FOR IN PERSON APPEARANCE	
(6-16-21)	B/F NOT Can. date for MH @	
	Cont to 8/4/21 for PTH Sullivan	
8/4/21	+ c. 9/15/21 DCE - VIFUN - Suburban 9:02	
9/15/21	Courtroom C, 10:46:10, Canavan	
	CON'T TO <u>12/1/21</u> FOR: (PRE-TRIAL/MOTION/TRIAL/DISP/PMT/SURR) OTHER: <u>DCE</u>	
Adv 11/26/21	Rej file @ to call	
11/26/21	Adj, 2:28:25, Sullivan J.	
	Δ MOT to continue is allowed.	
	Cont. 1/25/22 for DCE.	
1/25/22	+ c. 3/3/22 MOT TO SUPPRESS	
	in person - same terms	
3/1/22	BIA filed by the Δ - (M) to A+C filed -	
	off of 3/3/22 MOT TO SUPPRESS +	
	c. 5/19/22 MOT TO SUPPRESS -	
	in person -	

APPROVED ABBREVIATIONS

ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review
 SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance-without-finding scheduled to terminate PRO = Probation scheduled to terminate
 DFTA = Defendant failed to appear & was defaulted WAR = Warrant Issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = probation revocation hearing.



DATE	DOCKET ENTRIES
5/19/22	Courtroom C, 9:41:12, Canavan Case cont. 6/15/22 for MTS in-person.
6/2/22	Motion to Suppress filed
6-13-22	8-377 Mf
CBF	
8/1/2022	CBF, BY AGREEMENT, MTS CONTINUED FROM 8/3/22 TO 10/25/22
10/19/22	Case cont. by agreement 12/6/22 MTS
Nov 11/28/22	Def file (M) to cont - A request off of 12/6/22 MOT + C. 1/25/23 MOT - A request same terms - Boburne J 3:08
1-24-23	MTC 2-21-23
2/21/23	11:48 a.m. Sr. Sessions -
2-21-23	Motion to suppress heard by Judge Smith Ed 20 No Exhibits submitted 1-witness: Kurt Saunders Motion taken under advisement Cont. to 3-31-23 for status Judge has complaint & motion
3/9/23	Def (M) to suppress, Denied, Smith J parties notified
4/10/23	A FINES MOTION TO RECONSIDER DENIAL OF MOTION TO SUPPRESS
4/11/	
4-25-23	CBF DAs Conference, Mtg 5-25-23 (same)
5/25/23	+ C. 6/20/23 status / Smith J
5/25/23	Decision - Def (M) to reconsider denial of the M to suppress - DENIED - SMITH J

APPROVED ABBREVIATIONS
 ARR = Arraignment PT = Pretrial hearing CE = Discovery compliance & jury selection T = Bench trial JT = Jury trial PC = Probable cause hearing M = Motion hearing / SR = Status review
 SRP = Status review of payments FA = First appearance in jury session S = Sentencing CW = Continuance-without-finding scheduled to terminate P = Probation scheduled to terminate
 DFTA = Defendant failed to appear & was defaulted WAR = Warrant Issued WARD = Default warrant issued WR = Warrant or default warrant recalled PR = probation revocation hearing



CRIMINAL DOCKET DOCKET ENTRIES	DEFENDANT NAME	33	DOCKET NUMBER
	Robert R Irving		2159CR000224

DATE	DOCKET ENTRIES
JUN 20 2023	Cont. to 8-15-23 for status Peterson
AUG 15 2023	Cont. to 10-3-23 for status Caraway
OCT -3 2023	Cont. to 12-1-23 for status - DPW Smith
11/28/23	Motion to continue Rec + filed KMB
	Cont. to 11/28/23 MTC KMB
	(M) Allowed - off of 12/1/23
	Status + c. 12/20/23 status
	(Smith, J)
12/20/23	11-28-ARR - 1/17/24 status
	(Stone, J)
1/17/24	+ c. status 2/29/24
	(Smith, J) D request
2/29/24	case is in appeal
2/29/24	Smith J ARR 9:48 -
	status 5/16/24
	- DPW -
5/16/24	+ c. Appeal being processed
	c. status 7/24/24
	Smith 9:31 A
9-18-24	Order Denies Application for Interlocutory Appeal / file from SJC
7/24/24	Smith J - 10/1/24 TRC -
	9 a.m. -
10/1/24	+ c. TRC 11/20/24 (Smith J)
	9:24 A
11/20/24	+ c. JTR, Bernard J - on the
	next date - (1/16/25 TRC)

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DATE	DOCKET ENTRIES
1/10/25	+ C. JTR 2/7/25 CANAVAN WAR - 10:14 - Δ request - excluded for Rule 3b purposes
2/7/25	9:57 Knappdork JT - JTR 4/16/25
4/2/25	(M) Allowed JTR 6/17/25 of 4/16/25 determined WAR 3:11 (NFC)
6-17-25	Crtrm E, Canavan, 9:22am Sent to Rm C for BTR
1057 Am	Defendant's Motion for Limine to Exclude Evidence as the Result of a Warrantless Search - Denied Appellate Rights Preserved Commonwealth call witnesses Commonwealth Rests Defendant Rests w/o presenting evidence Defendant makes closings Commonwealth makes closings Defendant's motion for Required finding of Not Guilty Denied Held w/o Bail to June 18 PIA in sentencing Peterson J/ICM

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CRIMINAL DOCKET
DOCKET ENTRIES

DEFENDANT NAME
Robert R Irving

DOCKET NUMBER
2159CR000224

DATE	DOCKET ENTRIES
6/18/25	Alison Dudley sworn and testifies regarding
CLM B	Aid in sentencing. Recommends strict security of
11:16	Bridgewater State Hospital. A held w/o bail
7-18-25	for Aid in sentencing. Status 7/18/25.
7-18-25	Arr, Peterson, 11:35am -
	C → 8-12-25 Sentencing
	Aid in sentencing report received from Bridgewater
	Hospital - BP may copy + inspect
	Held w/o bail mitt to issue - transport
7-28-25	Notice of Petition to Transfer filed by Dept. ^{WMS} clear
	Pursuant to c123 s18 order of hospitalization
	allowed
	Held w/o Bail to August 12 sentencing
	Habe to issue to Bridgewater State Hospital
8-12-25	Arr, Peterson, 2:33pm - Sentencing hearing
	A sentenced to 2 1/2 years HOC, 1 year to
	serve, balance suspended for 2 years - sentence
	stayed pending final decision from Appellate Court
	Probation conditions: Sex offender evaluation + any
	recommended treatment; Sex offender registration
	(SORB); Stay away / no contact w/ any persons
	under 16; Do not possess child pornography;
	Subject to random phone searches by probation;
	GPS w/ home confinement - windows for probation
	visits + medical appointments (w/ 48 hour notice
	to probation); A must reside w/ sister
	8-11-27 Prob.

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CRIMINAL DOCKET DOCKET ENTRIES	DEFENDANT NAME Robert R Irving	DOCKET NUMBER 2159CR000224
DATE	DOCKET ENTRIES	
8-12-25	Updated written findings on A's motion to stay sentencing filed (Peterson, J.)	
8/13/25	Order of probation conditions filed.	
8/18/25	Probation's Motion to Request the court allow the Probation Dept to inspect / copy of 15(e) evaluation completed at Bridgewater State Hospital wms - clear	
	After hearing Motron Allaul Probation Allow to copy of Peterson J/KMW MH Evaluation	
8/19/25	Dej file Notice of Appeal	
11-14-25	NOA F by CPCS Atty Matthew Spurlock	
11/20/25	NORVA on for 12/8/25	
	Court finds Probable Cause for Surrender Detention not Requested	
	Court to January 30 PVH Atty Shyne Appointed at PVH cancel - No fee Smith J/KMW	

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COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

DISTRICT COURT DEPARTMENT
PLYMOUTH DIVISION
DOCKET No. 2159CR0224

COMMONWEALTH

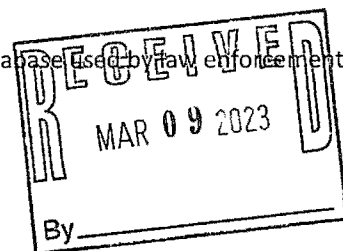
V.

ROBERT IRVING

DECISION ON DEFENDANT'S MOTION TO SUPPRESS**FINDINGS OF FACT:**

1. On October 22, 2020, a civilian named Kathleen Makara, brought a cell phone she found at Ellisville State Park to the Plymouth Police Department. She informed the desk officer that she located this phone off the beach trail by a tree. She further stated that in an attempt to determine who owned the phone, she viewed two disturbing images on the phone. The phone was unlocked and as a result she was able to access the photographs without needing a passcode code to obtain access to the phone.
2. The patrol officer on duty took the phone into evidence. Detective Kurt Saunders of the Plymouth Police Department was instructed by his on-duty detective lieutenant to view the photographs that Ms. Makara deemed as disturbing. The photos were of two males who appeared to be engaging in consensual oral sex. He determined at the time that there was no probable cause that a crime had been committed as it related to those photos.
3. Seven days later, on October 29, 2020, Detective Saunders was asked by his superior to attempt to determine the owner of the phone. No one had contacted the Plymouth Police regarding this phone in those seven days. Detective Saunders gained access to the phone non-passcode protected phone and opened the Facebook app. The owner of the account installed on the phone was Jean Kershaw.
4. That same day, Detective Saunders conducted a search on a database called CLEAR¹ to find Jean Kershaw. He was able to locate a Jean Kershaw in Sandwich with a home phone number associated to her in the search. He left a message for Kershaw.

¹ While its definition was not testified to at hearing, CLEAR is an investigative database used by law enforcement to locate individuals.

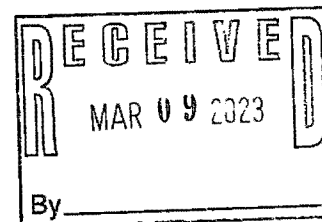


5. Detective Saunders also called the Sandwich Police Department to ask if they had any in-house information related to Kershaw. Detective Saunders was informed that Kershaw was deceased and a person by the name of Robert Irving (the defendant) was her next of kin.
6. Detective Saunders looked up Robert Irving on CJIS² in order to get a copy of his drivers license photograph. He then printed the RMV photo and compared the image with the image he had previously looked at that had been brought to his attention by Makara (the civilian witness who found the phone). Detective Saunders believe they were the same person.
7. On this same day, October 29, 2020, Detective Saunders left a message for Robert Irving at the same number he left a message for Jean Kershaw. According to the CLEAR database, that phone number belonged to both Kershaw and the defendant.
8. The next day, on October 30, 2020, after two phone calls to a phone number associated with Robert Irving and no response or attempt by anyone to claim the phone after the call to Irving, Detective Saunders was instructed by his detective lieutenant to search the phone for the purpose of seeing if there was anything illegal or inappropriate on the phone.
9. Detective Saunders found no less than 30 and no more than 100 videos and images of child pornography on the defendant's cell phone.

Decision:

The defendant has the burden of proof to show that a search occurred of his property. Commonwealth v. Pina, 406 Mass. 540, 544 (1990). Determine whether a search has occurred, it depends on “[w]hether the government’s activity intruded on the defendant’s reasonable expectation of privacy.” Id. at 544. “For a search to have taken place, the defendant must have had a subjective expectation of privacy, and that expectation must have been one that society recognizes as objectively reasonable.” Id. This analysis is dependent on all of the circumstances, including the nature of the place where the government activity occurs, and whether the defendant owned or controlled access to that place. Id. Also to be considered, whether the

² Criminal Justice Information System



defendant had a possessory or ownership interest in the item taken or inspected, and whether the defendant has taken normal precautions to protect his privacy. Id.

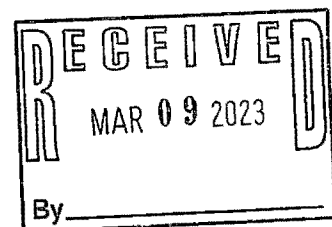
While this is a close call, the facts here meet the objective and subjective standards outlined above. The phone was located unlocked against a tree near public beach access trail. The amount of time the phone was at that location is unknown. The phone was opened by the civilian witness, without a passcode, and she viewed images she alleged were disturbing and brought the phone to the Plymouth Police Department on October 22, 2020. The phone remained at the police station for a total of eight days. No one contacted the police in the first seven days it was in the custody of the Plymouth Police Department regarding their ownership of this phone. On the seventh day, Det. Saunders called first the home phone number of the person for whom the phone may have belonged to (the defendant's mother) and left a message regarding the phone. He then called back that same number leaving a message for the defendant indicating the phone was at the police station. The police did not receive a response from the defendant that day. On the eighth day (the next day), when no one called to retrieve the phone, the police examined the phone. At that point, in this Court's opinion, the phone had been abandoned for eight days, not including any amount of time (unknown to the court) the phone had been left abandoned by the tree at Ellisville Beach prior to it being found by the civilian witness.

Therefore, as the cell phone was abandoned at the time of the examination by the police, the defendant had no reasonable expectation of privacy, and the police examination of this phone did not constitute a search in violation of the Fourth Amendment.

Therefore, the defendant's Motion to Suppress is DENIED.

Shelby M. Smith 3/9/23

Shelby M. Smith
Associate Justice
District Court



CERTIFICATE OF COMPLIANCE

I hereby certify that this application for direct appellate review complies with Mass. R.A.P. 11 and 20(a). The application is set in 14-point Athelas font and its argument section contains 1,774 words.

/s/ Matthew Spurlock
Matthew Spurlock

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May 6, 2026

CERTIFICATE OF SERVICE

Pursuant to Mass. R.A.P. 13(e), I hereby certify that on May 6, 2026, I have made service of this application upon the attorney of record for the Commonwealth by

Electronic Filing System on:

Carolyn Burbine
Melissa Weisgold Johnsen
Plymouth District Attorney's Office
166 Main Street
Brockton, MA 02401

/s/ Matthew Spurlock
Matthew Spurlock

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