

REPORT TO HON. PAULA M. CAREY
CHIEF JUSTICE OF THE TRIAL COURT

REGARDING

COMMONWEALTH v. JORGE A. ZAMBRANO

Submitted by

HON. PAUL C. DAWLEY
CHIEF JUSTICE OF THE DISTRICT COURT

JUNE 13, 2016

INTRODUCTION

On May 22, 2016, Jorge Zambrano shot and killed Auburn Police Officer Ronald Tarentino, Jr. and several hours later shot a Massachusetts State Trooper who was attempting to apprehend him. At that time, Zambrano was on probation for three separate District Court cases and was on release, awaiting trial, in two additional District Court cases.

On May 23, 2016, Trial Court Chief Justice Paula M. Carey committed that the Trial Court would conduct a thorough review of the court system's handling of Zambrano's criminal cases and determine any appropriate recommendations. Chief Justice Carey designated District Court Chief Justice Paul C. Dawley to conduct this review on May 25, 2016.

The Trial Court is committed to a comprehensive and open review of the handling of Zambrano's cases in the months leading up to this tragedy. The purpose of this report is to set forth the facts and circumstances of Zambrano's pending criminal cases, and to examine the relevant District Court and probation policies, practices, and procedures, and the laws and court rules that impacted and governed these decisions. Going forward, a broad consideration of proposed measures to enhance the resources available to judges, clerk magistrates, and probation officers in the exercise of their decision-making authority should be examined.

While this report seeks to establish and clarify the public record of the facts and procedures in the two criminal cases and three probation cases pending at the time of the killing, it does not examine the actions and policies of those outside of the Trial Court, such as the police, prosecutors, or defense attorneys. Beyond establishing this record, this report recommends further examination of several key court procedures to enhance the administration of justice and the safety of the communities the District Court serves.

MATERIALS REVIEWED

This report was based on an examination of Trial Court, Police Department, Registry of Motor Vehicles, and Department of Correction records constituting 1,663 pages, contained in the appendices to this report. The materials reviewed include the following items:

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OVERVIEW OF RELEVANT STATUTES AND LAW

The relevant statutes, court rules, and laws applied in Zambrano's two pending criminal cases and three pending probation cases are summarized below to provide a legal context for these proceedings.

The Setting of Bail Out of Court

A person who is arrested must be brought to court for arraignment if court is in session. Mass. R. Crim. P. 7(a)(1). If court is not in session, the defendant is entitled to a determination of cash bail by a clerk, assistant clerk, or bail commissioner. G.L. c. 276, § 58, ¶ 1. There is a legal presumption that the defendant will be released on personal recognizance unless "such a release will not reasonably assure the appearance of the person before the court." G.L. c. 276, § 58, ¶ 1; *see Paquette v. Commonwealth*, 440 Mass. 121, 126 (2003) ("The preferred result under G. L. c. 276, § 58, is release on personal recognizance."); *Querubin v. Commonwealth*, 440 Mass. 108, 111 n.3 (2003) (same). At one point, G.L. c. 276, § 58 permitted a defendant to be held if the person setting bail determined that the defendant's release would endanger the community. St. 1992, c. 201, § 3. The Supreme Judicial Court, however, declared that provision unconstitutional. *Aime v. Commonwealth*, 414 Mass. 667, 681-82 (1993). The person setting bail, therefore, may not consider the defendant's dangerousness in setting bail, only the defendant's likelihood to appear before the court.

The bail statute sets forth factors to be considered in determining whether a defendant will appear before the court:

1. the nature and circumstances of the offense charged
2. the potential penalty the person faces
3. the person's family ties
4. the person's financial resources
5. the person's employment record
6. the person's history of mental illness
7. the person's reputation
8. the person's length of residence in the community
9. the person's record of convictions
10. any illegal drug distribution
11. any present drug dependency
12. any flight to avoid prosecution
13. any fraudulent use of an alias or false identification
14. any failure to appear at any court proceeding to answer to an offense
15. whether the person is on bail pending adjudication of a prior charge

16. whether the acts alleged involve domestic violence
17. whether the acts alleged involve the violation of an abuse prevention order or similar order
18. whether the person has any history of abuse prevention orders or similar orders issued against the person
19. whether the person is on probation, parole, or other release pending completion of sentence for any conviction
20. whether the person is on release pending sentence or appeal for any conviction

G.L. c. 276, § 58, ¶ 1.

The person setting bail may set unspecified restrictions on personal associations or conduct including, but not limited to, avoiding all contact with an alleged victim of the crime and any potential witness or witnesses who may testify concerning the offense, as a condition of release. G.L. c. 276, § 58, ¶ 1. The person setting bail must warn the defendant that release on bail may be revoked if the defendant commits a new offense while on release. G.L. c. 276, § 58, ¶ 6.

If the case involves domestic abuse, the defendant may not be admitted to bail sooner than six hours after arrest, except in court by a judge. G.L. c. 276, § 58, ¶ 2. In cases alleging domestic abuse, the person setting bail may impose conditions on a person's release in order to assure the safety of the alleged victim, any other individual or the community. G.L. c. 276, § 58, ¶ 2.

The Issuance of the Complaint

Whether or not the defendant is arrested, a criminal case is initiated in the District Court when a clerk magistrate issues a criminal complaint. G.L. c. 218, § 35; G.L. c. 276, § 22. The officer, or other person, seeking the complaint must convey to the court the facts constituting the basis for the complaint and those facts must be reduced to writing or recorded. Mass. R. Crim. P. 3(g)(1). This is often done by an officer attaching and incorporating a police report, but it may also be done by a separate, abbreviated written account, referred to as a statement of facts. *Standards of Judicial Practice: The Complaint Procedure* § 2.00. The clerk magistrate may not issue a criminal complaint unless the clerk magistrate is satisfied that the officer (or other person) has demonstrated probable cause to believe that the defendant has committed the charged offense. Mass. R. Crim. P. 3(g)(2).

If the defendant is not arrested and the charge is a misdemeanor, the defendant has a right to a hearing before a clerk magistrate on whether a criminal case should be initiated unless there is an imminent threat of bodily injury, of the commission of a crime, or of flight from the commonwealth. G.L. c. 218, § 35A. At that hearing, the

defendant is allowed to participate. G.L. c. 218, § 35A. The clerk magistrate determines whether there is probable cause to support the criminal charges and may explore whether there is an alternative to criminal charges that is acceptable to both the complainant and the defendant. *Standards of Judicial Practice: The Complaint Procedure* § 3.01. If the charge is a felony brought by law enforcement, the law enforcement officer determines whether there will be a hearing or, instead, the clerk magistrate will immediately determine whether there is probable cause without the involvement of the defendant. G.L. c. 218, § 35A; *Standards of Judicial Practice: The Complaint Procedure* § 3.08. In any event, if the clerk magistrate issues a criminal complaint, the defendant is given a summons for an arraignment. G.L. c. 218, § 35A.

Arraignment and the Setting of Cash Bail

Whether or not the defendant was arrested or previously admitted to bail out of court, the judge at arraignment must determine whether to set bail and what conditions, if any, to impose. Mass. R. Crim. P. 7(b)(1)(D). In the absence of a prosecutor's motion for a dangerousness hearing, the judge is constrained by the same requirements and factors as a person setting bail out of court. G.L. c. 276, § 58, ¶ 1. In a domestic violence case, however, the judge may impose such terms as will insure the safety of the person allegedly suffering the physical abuse or threat thereof, and will prevent its recurrence. G.L. c. 276, § 42A, ¶ 1.

Dangerousness Hearings and Preventative Detention

When a defendant is charged with certain crimes, the prosecutor may move for a hearing to determine whether the defendant should be held without bail as a dangerous person. G.L. c. 276, § 58A; *see Mendonza v. Commonwealth*, 423 Mass. 771, 773 (1996) (upholding the constitutionality of these provisions). The following crimes are the required predicates for a dangerousness motion:

1. a felony offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person of another
2. any other felony that, by its nature, involves a substantial risk that physical force against the person of another may result, including the crimes of burglary and arson whether or not a person has been placed at risk thereof
3. a violation of an abuse prevention order or similar order
4. any domestic violence crime, misdemeanor or felony
5. any crime, misdemeanor or felony, while an abuse prevention order was in effect against the defendant
6. a drug crime with a minimum mandatory term of at least three years

7. intimidation of a witness, juror, or similar person
8. operating under the influence of alcohol, third or subsequent offense
9. certain firearm possession offenses

G.L. c. 276, § 58A(1). If the prosecutor moves for a dangerousness hearing, the judge must determine whether there is clear and convincing evidence that no conditions of release will reasonably assure the safety of any other person or the community. G.L. c. 276, § 58A(3). Upon that finding, the judge may order the defendant detained until trial, or up to 120 days (with certain possible extensions). G.L. c. 276, § 58A(3). If there is not such clear and convincing evidence, the judge may set a cash bail or conditions of release. G.L. c. 276, § 58A(2). A financial condition may be set only to assure the defendant's return to court, and not to result in pretrial detention. *Id.*

When the prosecutor moves for a dangerousness hearing, the prosecutor may move for up to a three-day continuance, and the defendant may move for up to a seven-day continuance. G.L. c. 276, § 58A(4). If the judge determines that there is probable cause that the defendant committed the charged crime, the defendant must be held during that continuance. G.L. c. 276, § 58A(4). If the prosecutor moves for the continuance, however, there must be good cause. *Mendonza*, 423 Mass. at 792.

It is unsettled whether the prosecutor may move for detention on the basis of dangerousness where the defendant was not arrested or was arrested but released on bail prior to arraignment. The Supreme Judicial Court heard oral argument on these issues in April 2016. *See Commonwealth v. Diggs*, No. SJC-12008; *Commonwealth v. Soto*, No. SJC-12009.

Bail Revocation

If a defendant is released and is charged with a new crime while awaiting trial, there are two methods by which a prosecutor may move to revoke the defendant's release on bail. First, the prosecutor may move for bail revocation under G.L. c. 276, § 58, ¶ 6. If so, the judge determines whether there is probable cause of the new offense and whether the release of said person will seriously endanger any person or the community. G.L. c. 276, § 58, ¶ 6. The statute sets forth the following factors to be considered by the judge:

1. the gravity, nature, and circumstances of the offenses charged
2. the defendant's record of convictions
3. whether the charges or previous convictions are for offenses involving the use or threat of physical force or violence against any person
4. whether the defendant is on probation, parole, or other release pending completion of sentence for any conviction

5. whether the defendant is on release pending sentence or appeal for any conviction
6. the defendant's mental condition
7. any illegal drug distribution or present drug dependency

G.L. c. 276, § 58, ¶ 6. If the judge determines that release will seriously endanger any person or the community and that detention of the person is necessary to reasonably assure the safety of any person or the community, the judge may order the defendant held for 60 days. G.L. c. 276, § 58, ¶ 6.

Alternatively, the prosecutor may move for bail revocation under G.L. c. 276, § 58B. If so, the judge may order the defendant held for 90 days if the judge determines that (1) there is probable cause for the new offense and (2) there are no conditions of release that will reasonably assure the person will not pose a danger to the safety of any other person or the community; or the person is unlikely to abide by any condition or combination or conditions of release. G.L. c. 276, § 58B. Under this statute, the commission of certain crimes creates a rebuttable presumption that the second prong is satisfied. G.L. c. 276, § 58B.

Defendant Capped Plea and Rule 4(c)

The procedure for tendering a guilty plea in the District Court is governed by G.L. c. 278, § 18, and Mass. R. Crim. P. 12. Both the statute and the rule provide for a defendant-capped plea, which allows the defendant to withdraw a plea if the disposition exceeds the terms of the defendant's request. A defendant may tender a defendant-capped plea at any time, *Charbonneau v. Presiding Justice of Holyoke Div. of Dist. Ct. Dep't*, 473 Mass. 515, 519 (2016), and without entering into a plea agreement with the prosecutor, Mass. R. Crim. P. 12 (b)(1).

When a defendant tenders a guilty plea with a dispositional recommendation for probation, Mass. Dist./Mun. Cts. R. Crim. P. 4(c) requires the parties to consult with probation on their dispositional requests prior to the submission to the court of the plea so as to enable the probation department to be heard as may be required by the court at the time the court considers the tendered plea or admission.

Probation Violation Proceedings

Criminal Violations. When a defendant being supervised by probation is charged with a new offense, a probation officer must commence probation violation proceedings by filing a notice of probation violation setting forth all the alleged violations and serving a copy on the defendant. Mass. Dist./Mun. Cts. R. Prob. Viol. 3(b)(i)-(ii), 3(c)(i)-(ii). The probation officer, prosecutor, or the judge may initiate a

probation detention hearing. Mass. Dist./Mun. Cts. R. Prob. Viol. 5. At such a hearing, the judge determines whether there is probable cause to believe that the probationer has violated a condition of probation and, if so, whether the probationer should be detained until the probation violation hearing. Mass. Dist./Mun. Cts. R. Prob. Viol. 5(c). Rule 5(c) sets forth the following factors to be considered by the judge:

1. the probationer's criminal record
2. the nature of the offense for which the probationer is on probation
3. the nature of the offense or offenses with which the probationer is newly charged
4. the nature of any other pending alleged probation violations
5. the likelihood of the probationer's appearance at the probation violation hearing if not held in custody
6. the likelihood of incarceration if a violation is found following the probation violation hearing.

If the judge does not order that the probationer be held, the judge may instead impose conditions set forth in District Court Standing Order 4-15.

Non-Criminal Violations. When a probationer violates a condition of probation other than by committing a new offense, the probation officer may, but is not required to, file a notice of probation violation, listing the alleged violations, and serving a copy on the probationer. Mass. Dist./Mun. Cts. R. Prob. Viol. 4(b)-(c). The decision whether to file a notice of probation violation "shall be made in accordance with the rules and regulations of the Office of the Commissioner of Probation," unless the judge imposing probation had specifically ordered that proceedings must be automatically commenced upon a violation or there is a statutory mandate. Mass. Dist./Mun. Cts. R. Prob. Viol. 4(b). The probation officer has the authority to issue a warrant for the probationer's immediate arrest or to request that the court issue such a warrant. G.L. c. 279, § 3. The probation officer may, instead, serve a copy of the notice on the probationer, either in-hand or by mail, and command the probationer to appear in court at a specific time. Mass. Dist./Mun. Cts. R. Prob. Viol. 4(c). When the probationer appears, the probation officer, prosecutor, or judge may initiate a probation detention hearing under Mass. Dist./Mun. Cts. R. Prob. Viol. 5.

Probation Violation Hearing. A probation violation hearing should be held within 30 days of the probationer's appearance. Mass. Dist./Mun. Cts. R. Prob. Viol. 3(b)(iii), 3(c)(vi), 4(d). At the hearing, the judge determines whether the probationer violated a condition of probation and, if so, what the consequence should be. Mass. Dist./Mun. Cts. R. Prob. Viol. 6(b). When probation was imposed after a guilty plea, the

judge may continue probation, terminate probation, modify the terms of probation, or impose a lawful sentence. Mass. Dist./Mun. Cts. R. Prob. Viol. 8(d). When probation was imposed after a continuance without a finding, the judge may terminate probation, continue the continuance without a finding, modify the terms of probation, enter a guilty finding and impose probation, or enter a guilty finding and impose a lawful sentence. Mass. Dist./Mun. Cts. R. Prob. Viol. 9(b).

Charged Criminal Offenses. Zambrano's two pending criminal cases and three pending probation cases at the time of the shooting consisted of the following charges:

Assault and Battery on a Family or Household Member, in violation of G.L. c. 265, § 13M(a), is a misdemeanor offense that is eligible for a dangerousness hearing on preventative detention under G.L. c. 276, § 58A, as it is a misdemeanor involving abuse as defined in G.L. c. 209A, § 1. The penalty for a first offense under § 13M(a) is imprisonment in a house of correction for not more than 2½ years or a fine of not more than \$5,000, or both such fine and imprisonment. Additionally, a conviction or a continuance without a finding requires completion of a certified batterer's intervention program, now re-named by the Department of Public Health, "Intimate Partner Abuse Education Program." G.L. c. 265, § 13M(d).

Assault and Battery on a Police Officer, in violation of G.L. c. 265, § 13D, ¶ 1, is a misdemeanor offense that is not eligible for a dangerousness hearing on preventative detention under G.L. c. 276, § 58A as it is neither specifically enumerated as a predicate offense nor a felony. The penalty for this crime is imprisonment for not less than 90 days nor more than 2½ years in a house of correction or a fine of not less than \$500 nor more than \$5,000.¹ This penalty language does not create a mandatory minimum sentence and does not preclude continuing the case without a finding or imposing a term of probation; the statute requires a minimum sentence of 90 days only if imprisonment is imposed. See *Commonwealth v. Hines*, 449 Mass. 183, 191 & n.4 (2007). In *Commonwealth v. Beal*, 474 Mass. 341, 352-54 (2016) the Supreme Judicial Court determined that assault and battery on a police officer is not a "violent crime" for purposes of the armed career criminal law, G.L. c. 269, § 10G.

¹ Section 13D is not limited to police officers; it applies to an assault and battery upon any public employee when such person is engaged in the performance of the employee's duties at the time of the assault and battery. Section 13D also has additional provisions that punish an attempt to disarm a police officer in the performance of the officer's duties by imprisonment in the state prison for not more than 10 years or in a jail or house of correction for not more than 2½ years or by a fine of not more than \$1,000. A violation of this portion of the statute would be eligible for a dangerousness hearing on preventative detention under G.L. c. 276, § 58A.

Disorderly Conduct, third offense, in violation of G.L. c. 272, § 53,² is a misdemeanor offense that is not eligible for a dangerousness hearing on preventative detention under G.L. c. 276, § 58A. The penalty for a second or subsequent offense is imprisonment in jail or a house of correction for not more than 6 months, or a fine of not more than \$200, or both.

Failure to Stop for Police, in violation of G.L. c. 90, § 25, is a misdemeanor offense that is not eligible for a dangerousness hearing on preventative detention under G.L. c. 276, § 58A. The penalty is a \$100 fine.

Leaving the Scene of an Accident Involving Property Damage, in violation of G.L. c. 90, § 24(2)(a), is a misdemeanor offense that is not eligible for a dangerousness hearing on preventative detention under G.L. c. 276, § 58A. The penalty for this crime is a fine of not less than \$20 nor more than \$200 or imprisonment for not less than two weeks nor more than two years, or both. This penalty language does not create a mandatory minimum sentence and does not preclude continuing the case without a finding or imposing a term of probation; the statute requires a minimum sentence of two weeks only if imprisonment is imposed. *See Commonwealth v. Hines*, 449 Mass. 183, 191 & n.4 (2007).

License Plate Violation, in violation of G.L. c. 90, § 23, is a misdemeanor offense that is not eligible for a dangerousness hearing on preventative detention under G.L. c. 276, § 58A. The penalty for this crime is a fine of not more than \$100 or imprisonment for not more than 10 days, or both.

Negligent Operation of a Motor Vehicle, in violation of G.L. c. 90, § 24(2)(a), is a misdemeanor offense that is not eligible for a dangerousness hearing on preventative detention under G.L. c. 276, § 58A. The penalty for this crime is a fine of not less than \$20 nor more than \$200 or imprisonment for not less than two weeks nor more than two years, or both. This penalty language does not create a mandatory minimum sentence and does not preclude continuing the case without a finding or imposing a term of probation; the statute requires a minimum sentence of two weeks only if imprisonment is imposed. *See Commonwealth v. Hines*, 449 Mass. 183, 191 & n.4 (2007).

Operating a Motor Vehicle after Suspension or Revocation, in violation of G.L. c. 90, § 23, is a misdemeanor offense that is not eligible for a dangerousness hearing on preventative detention under G.L. c. 276, § 58A. The penalty for this crime is a fine of not less than \$500 nor more than \$1,000 or imprisonment for not more than 10 days, or

² The complaint charges disorderly conduct under G.L. c. 272, § 43. This appears, however, to have been a ministerial error as this charge applies to disorderly conduct on a public conveyance.

both for a first offense, and imprisonment for not less than sixty days nor more than one year for a subsequent offense.³ This penalty language for a subsequent offense does not create a mandatory minimum sentence and does not preclude continuing the case without a finding or imposing a term of probation; the statute requires a minimum sentence of 60 days only if imprisonment is imposed. *See Commonwealth v. Hines*, 449 Mass. 183, 191 & n.4 (2007).

Resisting Arrest, in violation of G.L. c. 268, § 32B, is a misdemeanor offense that is not eligible for a dangerousness hearing on preventative detention under G.L. c. 276, § 58A as it is neither specifically enumerated nor a felony. The penalty for this crime is imprisonment in jail or a house of correction for not more than 2½ years or a fine of not more than \$500, or both.

Trespassing on State or County Property, in violation of G.L. c. 266, § 123, is a misdemeanor offense that is not eligible for a dangerousness hearing on preventative detention under G.L. c. 276, § 58A. The penalty for this crime is a fine of not more than \$50 or imprisonment for not more than three months.

Operating an Unregistered Motor Vehicle, in violation of G.L. c. 90, § 9, is a misdemeanor offense that is not eligible for a dangerousness hearing on preventative detention under G.L. c. 276, § 58A. The penalty for this crime is a fine of not more than \$100 for the first offense, and not more than \$1,000 for any subsequent offense.

³ Section 23 also provides that operating a motor vehicle after a suspension that is the result of having been found to be an habitual traffic offender is punishable by a fine of not less than \$500 nor more than \$5,000 or by imprisonment for not more than two years, or both.

ZAMBRANO'S CRIMINAL HISTORY

Zambrano's first adult entries on his criminal history began in 1998 at the age of seventeen. The details of Zambrano's criminal history, including past incarcerations on prior state prison sentences, and Registry of Motor Vehicles records, are contained in the appendix to this report. Zambrano was released from Souza-Baranowski Correctional Center state prison on November 1, 2013, after serving various concurrent sentences, including a seven year state prison sentence.

At the time Zambrano killed Officer Tarentino, Zambrano was on probation in three District Court criminal cases, and he was on release awaiting trial or disposition in two open District Court criminal cases. The facts and procedures detailed in this report focus on these five pending cases.

May 14, 2015 – January 4, 2016
Case No. 1
(Docket No. **1562CR5754**)

Worcester District Court Arraignment
and Court Appearances for Failure to Stop for Police,
Negligent Operation, Operating after Suspension, and
Leaving the Scene of Property Damage

According to the Worcester Police Department Report, on Thursday, May 14, 2015, the Worcester Police Department Vice Squad was executing a search warrant on the residence of a target suspected of selling crack cocaine. While watching the residence, officers saw the target leave the home and enter a Chevrolet Avalanche, driven by Zambrano. The officer recognized Zambrano, and knew that his license to operate had been suspended for years. The police attempted to stop the truck with a marked cruiser, flashing lights, and sirens. Zambrano sped away, striking a car in the Honey Farms parking lot, and leading the police on a chase through Worcester, Grafton, and Acton, after which the police terminated the pursuit. The Chevrolet was found abandoned, and police engaged in a K-9 search, recovering illegal drugs in a pipe. Records reviewed reflect that Zambrano was not arrested.

According to the Worcester Police Department report, the search warrant was executed on the residence of target, and police recovered, among other evidence, a .357 caliber firearm loaded with ammunition, three bags of cocaine, a scale, drug packaging materials, and scribbled notes documenting drug distributions. The facts contained in the police report are allegations, the recitation of which is not intended to compromise any pending criminal case against any other individuals.

On Wednesday, May 20, 2015, the Worcester Police filed an application for a criminal complaint against Zambrano for operating a motor vehicle after a revocation, failing to stop for police, operating a motor vehicle to endanger, and leaving the scene of an accident involving property damage. A clerk magistrate's hearing was held on June 26, 2015. The clerk magistrate found probable cause and issued a criminal

complaint for leaving the scene of an accident involving property damage, negligent operation of a motor vehicle, failure to stop for police, and operating a motor vehicle with a suspended license. On July 8, 2015, the court issued a summons for Zambrano to appear in Worcester District Court on August 4, 2015, for arraignment.

Zambrano was arraigned on Tuesday, August 4, 2015, in Worcester District Court. Zambrano had defaulted at the first call of the list. When Zambrano appeared later that day, he told the court he would hire a private attorney and said, "I was never notified about these matters. Nothing was sent to me saying that I had court or anything. This just came out of - out of nowhere right here."

In accordance with Mass. R. Crim. P. 3(g)(1), a brief statement of facts in support of the application for criminal complaint was filed with the court. No police report was filed with the court. There is no legal obligation on a police department to file a police report with the court, and practices vary across the state.

The prosecution did not request cash bail, and the charges against Zambrano did not qualify for detention based on dangerousness pursuant to G.L. c. 276, § 58A. The judge released Zambrano on personal recognizance. The prosecutor requested that the case be scheduled for the week of September 28, 2015, and the case was scheduled for a pretrial hearing on September 30, 2015. Zambrano appeared on September 30, 2015. Zambrano also appeared on November 24, 2015, for a pretrial hearing, and on January 4, 2016, for another pretrial hearing. The case was continued until February 5, 2016, when Zambrano appeared for discovery compliance and election of a trial date.

January 19, 2016
Case No. 2
(Docket No. **1662CR1297**)

Worcester Police Citation and Summons
for Operating after Suspension

On Tuesday, January 19, 2016, according to a Worcester Police Department report, the Worcester Police responded to the scene of a car crash involving Zambrano, who had been driving a black 2002 Chevrolet. They charged Zambrano with operating a motor vehicle with a suspended license. Zambrano was summonsed to appear in Worcester District Court on March 30, 2016, when he appeared and was arraigned.

According to the Worcester Police Department report, on Sunday, January 24, 2016, the Worcester Police responded to the report of a car crash in which the operator had hit something and was slumped over the steering wheel. Upon arrival, police officers saw a Chevrolet Avalanche with heavy front-end damage stopped in the roadway travel lane. The officers approached the truck and saw Zambrano slumped over, leaning toward the passenger side. One officer opened the door and asked Zambrano if he was okay. A large pit bull dog was sitting on the passenger side floor. Zambrano was making mumbling sounds, and the officer asked if he needed an ambulance.

As the officer leaned into the truck to check Zambrano for injuries, Zambrano grabbed the front of the officer's uniform and pulled him further into the truck. Zambrano told the officer, "fuck you, you piece of shit." The pit bull had jumped into the passenger seat, and the officer was face to face with the dog. The officer pushed off of Zambrano and told him to take his hand off. The officer then pulled Zambrano out of the truck. Zambrano struggled and refused to place his hands behind his back. After Zambrano was placed in handcuffs, he continued to struggle and attempted to break away from the officer's grasp. Zambrano told the officers, "I'm going to kick your ass," and, "you're lucky these cuffs are on me," and, "wait till I get out," and, "I'm going to find you." Zambrano was also calling out the officer's last names, telling them, "I'll remember you." Animal control was called to control the pit bull, Gage, which was later picked up by Heather Philip, Zambrano's girlfriend.

Zambrano was arrested and charged with assault and battery on a police officer and resisting arrest. At the police station, Zambrano was released by an assistant clerk magistrate on personal recognizance with the condition of his release that he not contact the named victim. He was released to appear in Worcester District Court on January 26, 2016.

On Tuesday, January 26, 2016, Zambrano was arraigned in the Worcester District Court. In accordance with Mass. R. Crim. P. 3(g)(1), a brief statement of facts in support of the application for criminal complaint was filed with the court. No police report was filed with the court. Zambrano told the court he would hire Attorney Anthony Scola to represent him. The prosecutor did not request bail and did not seek bail revocation on the other pending criminal case, but requested that the case be scheduled on February 5, 2016. The charges against Zambrano did not qualify for detention based on dangerousness pursuant to G.L. c. 276, § 58A. The judge released Zambrano on personal recognizance for a pretrial hearing date on

February 5, 2016. Zambrano appeared at the pretrial date, and the court scheduled the case for a further pretrial hearing on March 14, 2016.

February 5, 2016	Worcester District Court Compliance and Election Appearance
Case No. 1	for Failure to Stop for Police, Negligent Operation, Operation after
(Docket No. 1562CR5754)	Suspension, and
	Leaving the Scene of Property Damage

On Friday, February 5, 2016, Zambrano appeared in Worcester District Court for discovery compliance and election of a trial date. The case was scheduled for further hearing on March 14, 2016, for discovery compliance and election of a trial date.

February 10 – March 14, 2016	Clinton District Court Arraignment and Court Appearance
Case No. 4	for Assault and Battery on a Household or Family Member,
(Docket No. 1668CR176)	Trespass, Resisting Arrest, and Disorderly Conduct, Third
	Offense

According to the State Police report, on Wednesday, February 10, 2016, a witness called Leominster Police to report that, while driving on Route 495, she observed a vehicle in the breakdown lane. The witness reported that she saw a woman exit the driver's side door and run toward a male standing outside of the car with a phone in his hand. When the woman reached the man, the man hit her in the face, hard enough that she fell to the ground.

The State Police report indicates that, when the State Police Trooper arrived on scene, the trooper saw a white sedan in the breakdown lane and observed Zambrano trying to walk up the ramp in the snow. Zambrano was fumbling with a phone, a backpack, and other items. Zambrano appeared in a hurry; his head was down, he would not make eye contact with the officer, and his clothes appeared disheveled. Zambrano told the trooper he had to get to a gas station. It was apparent to the trooper that Zambrano was upset and did not want to speak to the officer. The trooper ordered Zambrano to stop at least three times and provide identification.

Zambrano stopped by the trooper's cruiser, and placed the items he had been holding on the hood of the cruiser. Zambrano told the trooper he did not have identification, but that his name was "Jose." He mumbled a last name the trooper could not hear, and told the trooper, "look me up, you know my cousin Luis." Zambrano continued to say things that did not make sense, and, despite commands to the contrary, Zambrano would not keep his hands out of his pockets or off the items on the hood. One of Zambrano's cell phones began to ring, and when the trooper

instructed Zambrano not to answer the phone and continue talking with the trooper instead, Zambrano grabbed the phone.

The trooper handcuffed Zambrano, and Zambrano did not comply with the trooper, stating he "really [couldn't] believe this shit." When the trooper placed one handcuff on Zambrano's right wrist, Zambrano started to pull his left arm away and refused to listen to commands. Zambrano stated, "I am not going back," and began a physical struggle with the trooper.

An off-duty Hudson Police lieutenant pulled up behind the trooper's cruiser to assist. The trooper warned Zambrano several times to comply or he would be sprayed, and Zambrano referenced his strength. The trooper sprayed Zambrano with Sabre Red Crossfire Spray, which had little effect. Zambrano continued to lock his arms and swing his body around. A backup trooper arrived on the scene, and the officers were able to bring Zambrano to the ground and secure him.

As Zambrano was transported to the barracks, according to the State Police report, he exhibited "temper tantrum like behavior," screaming, kicking his legs, flailing his arms, and crying. He told the troopers that he could "take all of [them] on and just wait until the handcuffs come off." He told the troopers they had made a big mistake, and if he had wanted to hurt them he could have taken their guns. He told the troopers they had left themselves open and, "I could have taken your guns." Zambrano stated he was angry and knew he was wrong. Several times Zambrano told the troopers how strong he was and that he could hurt them. Zambrano said he "hates his name" and what he has become. He further explained that he has anger issues and likes to feel the pain.

Once Zambrano was at the barracks, according to the State Police report, his behavior changed. He began to scream that he was in pain. He was given water and paper towels for his eyes. Leominster EMT personnel were contacted to wash out his eyes. Zambrano started to punch himself in the arms and temples and was banging his body against the wall. His behavior vacillated up and down, and, as a result, Zambrano was not fingerprinted. When placed in a cell, Zambrano began to stretch and exercise.

The female who had been in the white sedan with Zambrano was identified as Heather Philip. A trooper who spoke with Philip reported that she had a fresh scratch on half the length of her nose. Philip told State Police that she and her boyfriend, Zambrano, had argued about the car breaking down and their need to pick up a child. She told police she had parked the car and walked away, that nothing happened, and she was not in fear. Philip indicated her dog had scratched her face and declined to come to the barracks.

The State Police spoke with the civilian caller, who wrote a statement. According to the State Police report, on the basis of the observations of the officers

and the civilian statement, Philip also would be charged with domestic assault and battery.⁴

Police searched Zambrano's backpack and discovered two large knives, as well as a black hard plastic knife and thin durable extension claw, which, according to the State Police report, would be able to open a car if used in combination. They also found a Massachusetts Driver's License and bank card of Robert Jachimczyk. Jachimczyk's motor vehicle had been reported stolen to the Worcester Police in 2014.

Zambrano was arrested and charged with trespassing, resisting arrest, disorderly conduct, third offense, and assault and battery on a family or household member. A bail commissioner set bail at \$3,000 cash, which Zambrano did not post.

Zambrano was transported to Clinton District Court in custody for his arraignment the next day, February 11, 2016. Attorney Anthony Scola represented Zambrano. The prosecutor filed a motion to revoke Zambrano's bail on Docket No. 1662CR537 (Case No. 3), arguing that, "if you look at Mr. Zambrano's record, the open matter is an assault and battery on a police officer. Throughout his record, on almost all of his charges, there's a resisting arrest or assault and battery on a police officer charge."

On the new case, the prosecutor requested \$2,500 cash bail. The prosecutor did not request a dangerousness hearing pursuant to G.L. c. 276, § 58A. In response to the motion to revoke and cash bail request, the defense attorney argued the facts and circumstances of the car breaking down and the obligation to pick up Zambrano's girlfriend's son from the school bus.

The defense attorney stated, "when they were driving down 495 all the electrics in the car just shut down right by the exit 26, Judge. Ms. [redacted] they were on their way back to Worcester, Judge, to pick up her child, who was going to be dropped off. . . . She was saying that last month the child was dropped off unattended and they were struck by a vehicle, Judge. The policy was now that a parent had to be there. They were on the phone, Judge, back and forth trying to get someone to pick up the child or be there when the child was off the bus, Judge. She would indicate, Judge, that this [redacted] there was no argument. That she was just upset, Judge, trying to find someone to pick her child up. Mr. Zambrano was going to the gas station on that exit, Judge, and he was actually cutting across the interchange, Judge, to get to the gas station to see if they could get some help."

The defense attorney argued that Zambrano did not have a default for failure to appear on his record since 2006, and also that Zambrano had not been arraigned on charges on which the motion to revoke had been filed because of the defendant's later arrival to court that day after a snow storm. To the contrary, court records demonstrate that Zambrano had been arraigned on Docket No. 1662CR537 and given a bail warning.

⁴ The court records reflect no charges were filed against Philip.

The judge stated, "Well, look. If there's some question about whether a judge gave him his bail warnings, that's fine, but he must have signed a recog slip and, you know, Mr. Zambrano's been around the block. He knows if he gets arrested again, his bail could be revoked. I don't have any doubt about that."

The judge further stated, "this is troubling. Authority means nothing to him. In fact, it's exactly the opposite." The judge also said, "it was a while ago, but he got two and a half years in jail for assault and battery on a police officer, along with another more significant sentence. I mean, how many times is it going to take here? He may not like what a police officer says, but he's got to, you know, listen and obey them." The judge told Zambrano, "There's no excuse for this. Don't let it happen again. If a police officer wants to talk to you, you'd better talk to him and behave."

The prosecutor stated to the court, "I can tell Your Honor that the complaining witness as to Count one [assault and battery on a family or household member] is here today. She denies the allegations as to Count one. Indicates she was never struck by Mr. Zambrano, which there's a conflicting statement, obviously, from the caller. And I was intending to listen to a 911 tape to see exactly what the caller stated on the next date."

The judge denied the motion to revoke bail on the earlier case, Docket No. 1662CR537, and set cash bail in the amount of \$500 on the new case, based on the nature and circumstances of the offense charged, the potential penalty the defendant faced, the defendant's record of convictions, and the alleged victim's denial that Zambrano hit her as reasons for the bail order. Zambrano was ordered to appear for a pretrial hearing on March 15, 2016. Zambrano's \$500 cash bail was posted later that morning by the alleged victim, Heather Philip. The case was brought forward on March 14, 2016, by Zambrano's attorney, and set for discovery compliance and election of a trial date on April 12, 2016.

March 30, 2016

Case No. 2

(Docket No. 1662CR1297)

Worcester District Court Arraignment
for Operating after Suspension Summons

On Wednesday, March 30, 2016, Zambrano was arraigned on the charge of operating a motor vehicle with a suspended license from the car crash in Worcester on January 19, 2016. In accordance with Mass. R. Crim. P. 3(g)(1), a brief statement of facts in support of the application for criminal complaint was filed with the court. No police report was filed with the court. Attorney Anthony Scola represented Zambrano. The prosecution did not request cash bail, and the charge against Zambrano did not qualify for detention based on dangerousness pursuant to G.L. c. 276, § 58A. Zambrano was released on personal recognizance for the next day,

March 31, 2016, when Zambrano's other pending matters in Worcester District Court were scheduled.

March 31, 2016

Cases Nos. 1, 2, and 3

(Docket Nos. 1562CR5754, 1662CR537, 1662CR1297)

Tenders of Plea to Three
Worcester District Court Cases

On Thursday, March 31, 2016, Zambrano appeared in the Worcester District Court and tendered pleas in all three Worcester cases. Attorney Anthony Scola represented Zambrano, and the defendant and prosecutor offered an agreed disposition recommendation to the court.

- **Failure to Stop for Police, Negligent Operation, Operating after Suspension, and Leaving the Scene of Property Damage (Docket No. 1562CR5754)**

The prosecutor relayed the following facts to the court: "On May 14th, 2015 officers of the vice squad in the City of Worcester were doing some surveillance in the city when they saw a black Chevrolet bearing the registration plate 5XGM80 on Providence Street. They saw the operator of the vehicle, recognized the defendant immediately. They knew from previous dealings that he did not have a license and has not had a license for some years. They attempted to initiate a stop on that vehicle. It was at this point that Mr. Zambrano drove through a parking lot of a Cumberland Farms where he and struck [sic] another vehicle, a Mercedes Benz."

Zambrano admitted to sufficient facts for leaving the scene of an accident involving property damage, negligent operation of a motor vehicle, failing to stop for the police, and operating a motor vehicle with a suspended license. The judge accepted the agreed recommendation and imposed a continuance without a finding for one year, with conditions that Zambrano remain drug and alcohol free, submit to random testing, submit to a mental health evaluation, and complete treatment, aftercare, and prescribed medication as recommended in the evaluation.

- **Assault and Battery on a Police Officer and Resisting Arrest (Docket No. 1662CR537)**

The prosecutor relayed the following facts to the court: "An officer was dispatched to Lincoln Street for report of an accident of [sic] some injury. The sole vehicle had the driver slumped over the wheel. That operator was later identified as the defendant in this matter. As the officer opened the car to check on him the man mumbled. He then grabbed the officer by the front of his shirt,

pulling him into the car. A brief struggle ensued. The officer later did place him under arrest.ö

Zambrano admitted to sufficient facts for assault and battery on a police officer and resisting arrest. The judge accepted the agreed recommendation and imposed a continuance without a finding on both counts for one year, concurrently with Docket No. 1652CR5754.

- **Operating after Suspension (Docket No. 1662CR1297)**

The prosecutor relayed the following facts, öon January 19th, 2016, Worcester Police officers did make a stop of a motor vehicle operated by the defendant, Jorge Zambrano. It was later discovered that he did not have a license to operate that vehicle.ö Zambrano admitted to sufficient facts for operating a motor vehicle with a suspended license.

The judge accepted the agreed recommendation and imposed a continuance without a finding for one year. The continuance was imposed concurrently with Docket No. 1562CR5754.

Although the prosecutor recited a summary of the facts to support the elements of the charged offenses, the Worcester Police Department reports of the crimes were not provided to the judge at the time of the pleas. The prosecutor requested \$500 restitution on behalf of the owner of the Mercedes that Zambrano hit when he left the scene in Docket No. 1562CR5754. When the judge asked the prosecutor whether there were any victim impact statements, the prosecutor said, öYour Honor, I spoke with the officer involved in the lead docket ó Iön sorry ó in the second incident. He explained to me that the situation was tense but that he recognizes that the defendant probably needs more help than he does in jail time. Those are his words to me.ö

The judge asked the defendant when the last time was that he had a driverø license, and Zambrano stated, öI never had one in my life. Horrible choice.ö The judge asked Zambrano, öNot one of these cases would have happened if you werenø driving, right? Not one.ö When Zambrano replied, öMy first lawyer was a court appointed. Thatø what screwed me. Excuse me.ö The judge responded, öWell, putting that aside, you knew ó you know youøre not supposed to be driving and youøre doing it. So, I mean, youøre doing this to yourself.ö Zambrano replied, öNo, I know.ö The judge then stated, öAll right. This is agreed upon. Iøl do it.ö

The judge ordered Zambrano to undergo a Risk / Need evaluation, ordered he pay restitution, and placed Zambrano on probation until March 28, 2017. The judge advised Zambrano, öMr. Zambrano, please be careful,ö to which Zambrano replied, öIön trying.ö

After the plea had been accepted, the probation officer stated, "Your Honor, for the record, the defendant is not a probation candidate."

April 4 – 11, 2016

Cases Nos. 1, 2, 3

(Docket Nos. 1562CR5754, 1662CR537, 1662CR1297)

Probation Supervision
in Worcester District Court

The probation chronological report reflects that on Monday, April 4, 2016, Zambrano was twenty-five minutes late for his scheduled first appointment with his probation officer. During this meeting, as outlined in the probation officer's chronology, the probation officer read over his conditions of probation and explained her role. Zambrano stated he would rather do jail time than abide by conditions, and he appeared agitated that he was "being placed on color code," the process for administering random screens. The probation officer explained it was up to Zambrano and that he should talk to his attorney. Zambrano appeared to calm down and stated he had a hard time with supervision. The probation officer explained that his actions or lack of actions influence his time on probation. The probation officer scheduled another visit that same week, as Zambrano had come in at the end of the day.

On Friday, April 8, 2016, Zambrano failed to report for a scheduled appointment with his probation officer, including a drug screen. The probation officer telephoned Zambrano, who stated he had forgotten the visit. The probation officer advised him to come in between 3:00 p.m. and 3:30 p.m. Thereafter, Zambrano called his probation officer to indicate he would not be in to meet with her because he had work, and wanted to know if he could come in Monday, April 11, 2016 instead. The probation officer scheduled a Monday appointment and informed Zambrano he would be marked as having missed an office visit and missed a drug screen.

On Monday, April 11, 2016, Zambrano failed to report for his scheduled appointment with his probation officer at 8:30 a.m. At 9:00 a.m. the probation officer called Zambrano, who said he was on his way in to meet with her and he was having a bad morning. When Zambrano arrived, the probation officer addressed missed visits and discussed the need to be on time. An assistant chief probation officer completed the preliminary Ohio Risk Assessment System ó Community Supervision

Screening Tool (ORAS-CSST)⁵ with Zambrano. Zambrano tested positive for cocaine and self-reported use of Suboxone. Zambrano stated he had used cocaine the preceding week.

April 12, 2016	Clinton District Court Compliance and Election Appearance
Case No. 4	for Assault and Battery on a Household or Family Member
(Docket No. 1668CR176)	

On Tuesday, April 12, 2016, Zambrano appeared in the Clinton District Court for discovery compliance and election of a trial date on the assault and battery on a household or family member and other charges. The case was continued until May 17, 2016 for discovery compliance and election of a trial date.

April 19 – 22, 2016	Probation Supervision
Cases Nos. 1, 2, 3	in Worcester District Court
(Docket Nos. 1562CR5754, 1662CR537, 1662CR1297)	

The probation chronological report reflects that, on Tuesday, April 19, 2016, Zambrano appeared for a scheduled appointment with his probation officer. The probation officer began the comprehensive Ohio Risk Need Assessment ó Community Supervision Tool (ORAS-CST)⁶ with Zambrano, and asked him to return on April 22, 2016, to complete the supervision assessment and probation case planning process. The probation officer reminded Zambrano about the fees he owed, and Zambrano told the probation officer he was waiting to hear back from MassHealth for insurance coverage.

On Friday, April 22, 2016, Zambrano failed to report for a scheduled appointment with his probation officer. Zambrano left the probation officer a voicemail at 8:00 a.m. and reported having an asthma attack. Zambrano stated in the voicemail he would be unable to come to his 8:30 a.m. appointment. The probation

⁵ORAS is a risk assessment instrument, used by the Probation Service, which measures risk of re-offense. The CSST is a four item instrument designed to assist in the designation of supervision level. Edward Latessa, *Creation and Validation of the Ohio Risk Assessment System, Final Report* (July 2009). Once identified as moderate to high risk through the CSST, the Probation Service then provides these cases with a comprehensive ORAS assessment, the ORAS-CST. ORAS does not measure a probationer's dangerousness or propensity for violence.

⁶ The ORAS-CST instrument (1) separates offenders into risk groups based on their likelihood to recidivate; (2) identifies dynamic risk factors that can be used to prioritize programmatic needs; and (3) identifies potential barriers to treatment. Edward Latessa, *Creation and Validation of the Ohio Risk Assessment System, Final Report* (July 2009).

officer telephoned Zambrano, who sounded as though he was having trouble breathing. The probation officer encouraged Zambrano to go to the emergency room, and Zambrano indicated he was worried because he did not have MassHealth. The probation officer suggested calling the financial department at the University of Massachusetts Medical Center to see if they could work with Zambrano because he had a pending MassHealth application. Zambrano was told to report to meet with the probation officer that day by 4:00 p.m.

Zambrano did not report to his probation officer until 4:15 p.m. Zambrano stated he could not give a urine sample, but self-reported cocaine use the day before. The probation officer informed Zambrano that a notice of probation violation would issue on Monday. The probation officer and Zambrano discussed his struggles with probation. The probation officer requested that Zambrano think about support services he may need to be successful on probation, and she told Zambrano to report to probation at 11:00 a.m. on Monday.

April 25, 2016
Cases Nos. 1, 2, 3

(Docket Nos. **1562CR5754, 1662CR537, 1662CR1297**)

Probation Supervision
in Worcester District Court and
Notice of Probation Violation

The probation chronological report states that on Monday, April 25, 2016, Zambrano appeared twenty minutes late to his probation office visit. Zambrano reported that he last used cocaine on Thursday, April 21, 2016. Zambrano self-reported that he had been drinking on and off for the past month, and that he drinks and uses drugs to self-medicate. The probation officer discussed treatment and counseling options and told Zambrano that he cannot use drugs and drink while on probation. The probation officer informed Zambrano that a notice of probation violation would issue that day, and asked him to think about what he needed for support programs moving forward. The probation officer referred Zambrano for a mental health evaluation.

In tests administered that day, Zambrano tested positive for cocaine and negative for alcohol.

That same day, Zambrano's probation officer filed a notice of a probation violation with the court and mailed a copy to Zambrano, summoning him for a hearing on May 11, 2016. The notice of violation of probation set forth Zambrano's violations, including five missed office visits on April 4, 8, 11, 22, and 25, 2016, as well as a missed drug or alcohol screen on April 8, 2016, a self-report of Suboxone use on April 11, 2016, a self-report of cocaine use on April 22, 2016, and a positive screen for cocaine on April 25, 2016. The written notice also referenced "self-report of alcohol use on various dates."

On Wednesday, April 27, 2016, Zambrano appeared fifteen minutes late for a scheduled appointment with his probation officer. The probation officer handed Zambrano the notice of probation violation that she had mailed to him two days earlier, and the probation officer discussed the violations with Zambrano. Zambrano provided the probation officer with verification of his address in the form of a letter from Heather Philip. The probation officer reminded Zambrano that she had told him to call her during his previous office visit for drug and alcohol screens. The probation officer noted in her chronological report that she completed the Probationer Individual Change Agreement with Zambrano, and that he "appear[ed] to be becoming more engaged in process, however still not complete[ly] open to any additional treatment / help. [Probation Officer] to continue to address with [Probationer]."

On Tuesday, May 3, 2016, Zambrano reported one hour late to a scheduled appointment with his probation officer. The probation officer was in court, and Zambrano was told to report the next day at 8:30 a.m.

On Wednesday, May 4, 2016, Zambrano appeared ten minutes late for a scheduled meeting with his probation officer. Zambrano provided the probation officer with his new address, and she told him to bring address verification the following week. Zambrano reported he was still waiting to receive MassHealth insurance to make an appointment for a mental health evaluation. The probation officer addressed money that Zambrano owed, and Zambrano reported he did not want to pay restitution because his insurance was already paying the restitution. The probation officer suggested Zambrano speak with his attorney. Zambrano tested negative for alcohol and drugs.

On Tuesday, May 10, 2015, the probation chronological report reflects that the probation officer conducted Zambrano's home visit. Zambrano was home with his girlfriend. Zambrano told his probation officer he had attended an intake appointment at Behavioral Health and was waiting for an evaluation appointment. The probation officer reminded Zambrano of the court date on May 11, 2016, for the probation violation, and she stressed to him the importance of being on time.

May 11, 2016
Cases Nos. 1, 2, 3
(Docket Nos. **1562CR5754, 1662CR537, 1662CR1297**)

Probation Violation Hearing
in Worcester District Court

On Wednesday, May 11, 2016, Zambrano appeared in the Worcester District Court for a hearing on his notice of probation violation. The defendant told the court he would be represented by Attorney Anthony Scola. The prosecutor answered on the probation case and agreed to June 9, 2016, for the probation violation hearing. No request for probation detention was made during the hearing.

May 13, 2016
Cases Nos. 1, 2, 3
(Docket Nos. **1562CR5754, 1662CR537, 1662CR1297**)

Probation Supervision
in Worcester District Court

The probation chronological report states that, on Friday, May 13, 2016, Zambrano's probation officer submitted Zambrano's Risk / Need supervision plan to her supervisor. The Risk / Need supervision plan reflected that Zambrano scored as "high risk" under the ORAS risk assessment. For purposes of ORAS, "high risk" relates to the risk that the probationer may commit another crime while on probation. ORAS does not measure a probationer's dangerousness or propensity for violence.

May 16, 2016
Case No. 5
(Docket Nos. **1662CR3389**)

Worcester District Court Arraignment
for Operating after Suspension

According to a State Police report, on Monday, May 16, 2016, a State Police Trooper observed Zambrano driving an Acura Infiniti, with Massachusetts plates belonging to a Nissan Maxima. The trooper stopped Zambrano, conducted a license check, and determined that his right to operate had been suspended. The trooper arrested Zambrano and had his car towed.

Zambrano was arraigned in Worcester District Court the same day, May 16, 2016, for operating a motor vehicle after suspension, operating an unregistered motor vehicle, and a license plate violation to conceal his identity. Zambrano indicated he would be represented by Attorney Anthony Scola. The judge appointed another attorney to represent Zambrano for bail purposes only. The judge allowed the prosecutor's motion to amend the charge of operating a motor vehicle after a suspension to a subsequent offense. No request was made for cash bail, nor was there a request for revocation on the other pending criminal case, Docket No. 1668CR176

(Case No. 4). The charges against Zambrano did not qualify for detention based on dangerousness pursuant to G.L. c. 276, § 58A. The probation officer stated that probation was not asking for detention, but requested that Zambrano be served with an amended notice of probation violation. The judge granted this motion. Zambrano was released on personal recognizance, and his case was scheduled for pretrial hearing on June 9, 2016, the same date on which Zambrano's probation violation hearing had previously been scheduled.

May 17, 2016

Case No. 4

(Docket No. **1668CR176**)

Clinton District Court Compliance and Election Appearance
for Assault and Battery on Family or Household Member

On Tuesday, May 17, 2016, Zambrano's case was scheduled in the Clinton District Court for discovery compliance and the election of a trial date on the assault and battery on a household or family member and other related charges. The case was continued until June 24, 2016, for election of a trial date.

May 17 – 18, 2016

Cases Nos. 1, 2, 3

(Docket Nos. **1562CR5754, 1662CR537, 1662CR1297**)

Probation Supervision
in Worcester District Court

According to the probation chronology report, on Tuesday, May 17, 2016, Zambrano failed to appear for a drug test and failed to report for an alcohol screen.

On Wednesday, May 18, 2016, Zambrano appeared for a scheduled appointment with his probation officer. The probation chronology report documents that Zambrano stated he was struggling to keep doing the right thing. His probation officer pointed out that Zambrano needed to be honest in every part of his life for things to fall into place. The probation officer noted in the chronology report that Zambrano "appears to be trying but struggling." Zambrano reported to the probation officer that he has not been using drugs at all, and she gave him positive reinforcement. Zambrano tested negative that same day for controlled substances.

**Fatal Shooting of Auburn Police Officer Ronald Tarentino, Jr.
May 22, 2016**

On May 22, 2016, Zambrano shot and killed Auburn Police Officer Ronald Tarentino, Jr. Later the same day, when police attempted to capture Zambrano, he shot and injured a Massachusetts State Police Trooper. Zambrano was then killed in a shootout with police.

FINDINGS AND RECOMMENDATIONS

This examination of court records and proceedings finds that the judicial decisions in Zambrano's pending criminal cases were made by each judge in accordance with the law and complied with relevant statutes, common law, and constitutional principles. The judges who presided over these cases are experienced (with approximately a combined fifty years of judicial service) and have strong reputations for fairness.

In addition, Commissioner of Probation Edward Dolan has found that the probation officer supervising Zambrano's pending cases met all probation standards regarding the assessment process, frequency of contacts, verification of probation conditions, and taking corrective action to address issues with compliance. The probation officer diligently monitored Zambrano and took several measures to attempt to bring him into compliance with his conditions of probation.

The exercise of discretion by judges, clerk magistrates, and probation officers is an important and fundamental component in the fair functioning of our court system. Notwithstanding the lawful exercise of discretion in these cases, in the face of these tragic circumstances, a further examination of existing procedures, court rules, and laws is warranted and required. The Trial Court has an on-going responsibility to consider our policies and practices, and to examine how we make decisions, what information is available for consideration, and how we can improve the administration of public justice and ensure public safety. Just decisions that promote public trust and confidence are informed by comprehensive information, current and historical, as well as clear standards and procedures.

Consistent with these responsibilities, this report sets forth six general recommendations for the Trial Court's consideration:

- (1) Evaluate how risk of re-offense and dangerousness are assessed in criminal cases.** The Trial Court should evaluate, consistent with due process and equal protection considerations, whether a validated risk assessment instrument identifying those individuals with the greatest propensity for future dangerous criminal acts should be adopted for use by judges and probation officers. If the Trial Court does adopt such an instrument, a determination should be made as to what stages in the criminal justice proceedings the validated risk assessment instrument would provide the greatest impact on public safety and maximize the ability both to identify dangerousness and to respond appropriately. Further, the Trial Court should examine how information provided by a validated risk assessment instrument would be used in compliance with constitutional strictures and sound legal practices.

- (2) **Review the enforcement model for “high risk”⁷ probationers.** To ensure strict and immediate accountability for “high risk” probationers, the Trial Court should undertake a review of probation standards and policies relating to supervision, the issuance of warrants, and requests for detention of “high risk” probationers. The Trial Court should consider whether presumptive enforcement practices should be adopted for “high risk” probationers.
- (3) **Expand information provided to judges and other court officials.** To ensure that judges, clerk magistrates, bail commissioners, and probation officers are furnished at every stage with complete, timely, and relevant information upon which to base their decisions, the Trial Court should develop and further utilize technology to make additional critical information available to court personnel. Expanding the availability of additional case-related information will enable additional access by judges, clerk magistrates, bail commissioners, and probation officers to police reports and other relevant information, including Registry of Motor Vehicle records, out-of-state criminal records, sealed records, and previous case documents (such as police reports on prior cases) relating to a defendant or probationer’s criminal history.
- (4) **Strengthen judicial and probation education programs on “high risk” offenders.** The Trial Court should develop specific educational curricula relating to “high risk” offenders. Such training should include the use of ORAS, an overview of the considerations relevant to offenders at “high risk” to re-offend, and the setting of conditions of probation. Further, the education programs should consider an examination of various types of risk assessment and the recognition of factors related to risk of recidivism, dangerousness, and failure to appear. National experts on violence prediction and risk assessment for re-offense and dangerousness should be consulted in the development of these education programs.
- (5) **Uniformly apply Rule 4(c) to criminal case dispositions.** Massachusetts Dist./Mun. Cts. R. Crim. P. 4(c) provides in relevant part: “Prior to submission to the court of a tender of plea or admission or a request for other disposition, and if the proposed dispositional terms involve any probationary terms or conditions, the parties shall consult with the probation department, so as to enable the probation department to be heard as may be required by the court at the time the court considers the tendered plea or admission.” It is recommended that procedures be

⁷ For purposes of these recommendations, the Ohio Risk Need System Assessment risk categories of “high risk” and “very high risk” for re-offense will both be referred to as “high risk.”

developed, and adequate resources provided, to ensure uniform adherence to Mass. Dist./Mun. Cts. R. Crim. P. 4(c).

- (6) **Implement Trial Court Guidelines for Pretrial Conditions of Release.** Chief Justice Carey recently approved and promulgated Trial Court Guidelines for Pretrial Conditions of Release. The Guidelines include a provision for the enforcement of such conditions and set forth the authority of the Probation Service to seek an arrest warrant for an alleged violation of a pretrial condition of release pursuant to G.L. c. 279, § 3. The Guidelines further establish that both the Probation Service and the prosecution have the authority to seek revocation of pretrial release. It is recommended that the Guidelines be implemented, and appropriate forms be promulgated, to ensure the adoption of and uniform adherence to these Guidelines. In conjunction with implementation of the Guidelines, the Trial Court should also examine the development and expansion of pretrial services.

The District Court is prepared to assist in further identifying, developing, and implementing these areas of recommendation.

Appendix A

Please note: many of the files linked in this document are large and may take a while to download.

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