

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

SUPREME JUDICIAL COURT
NO.:

APPEALS COURT
NO.: 2019-P-0608

COMMONWEALTH OF MASSACHUSETTS

APPELLEE,

v.

STEVEN VELASQUEZ
DEFENDANT/APPELLANT.

APPLICATION FOR DIRECT APPELLATE REVIEW
FOR THE DEFENDANT/APPELLANT

ON APPEAL FROM A FINDING OF
VIOLATION OF CONDITIONS OF PROBATION
IN THE SUFFOLK SUPERIOR COURT

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July 2019

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(1) REQUEST FOR DIRECT APPELLATE REVIEW

Now comes the Appellant, Steven Velasquez (Velasquez), who applies, pursuant to Mass. R. A. P. 11, for direct appellate review of his February 8, 2019 probation revocation on Suffolk Superior Court Docket #: 1684CR00247. (ADD. 30)¹.

(2) STATEMENT OF PRIOR PROCEEDINGS

On March 31, 2016, a thirteen count indictment was returned against Velasquez (ADD. 12). On September 23, 2016, after a jury trial, Velasquez was found guilty on one count: violation of an abuse prevention order (ADD. 18-22). G. L. c. 209A, § 7. On September 27, 2016, Suffolk Superior Court Judge Douglas H. Wilkins sentenced Velasquez to 15-months in the Suffolk County House of Correction at South Bay

1 Cited within: Addendum (ADD. [Page]); Record Appendix - Impounded (R.A. [page]); Final Probation Surrender Hearing Transcript (T. at [page]).

During the Final Probation Surrender Hearing (Hearing) for the Appellant, Steven Velasquez (Velasquez), the Commonwealth's Counsel (Commonwealth) admitted the March 23, 2018 Special Suffolk County Grand Jury Minutes (Minutes) as a Hearing exhibit (ADD. 33). Although previously admitted by the Commonwealth as an exhibit during an open court proceeding, (T. at 32), Velasquez has chosen to submit the Minutes here as part of an impounded appendix and cites to the Minutes by their corresponding page numbers from within that appendix as: (R.A. [page]).

with 263 days credit and 2-years of supervised probation (ADD. 22).

On December 16, 2017, Velasquez was arrested for possession of a firearm; possession of ammunition without an FID card; carrying a loaded firearm; and, defacing a firearm serial number (R.A. 5). On February 8, 2019, after a Final Probation Surrender Hearing (Hearing), Velasquez was found to be in violation of the terms of his probation and was ordered by Superior Court Judge Robert N. Tochka (Court) to "serve the balance of sentence imposed on 09/26/2016 (2 years 6 months at the Suffolk County House of Correction at South Bay, 15 months to be served, balance suspended probation for 2 years) DEEMED SERVED" (ADD. 31).

(3) STATEMENT OF RELEVANT FACTS

On December 16, 2017, at approximately 0140 hours, Massachusetts State Police Officer John Phonesavanh (Phonesavanh) was on Ocean Avenue in the City of Revere when he observed a motor vehicle civil infraction, a defective center-mounted brake light, and subsequently conducted a motor vehicle stop on a brown colored GMC Envoy (Envoy) displaying New

Hampshire license number 4280517 (R.A. 1-2).

Phonesavanh noted in his Arrest Report (Report)² that he perceives this area of Revere as "a high crime area" (R.A. 2). According to Phonesavanh, "[c]rimes include firearms violations, assaults, and narcotics offenses, which are enforced through proactive enforcement and calls of service from both Revere P.D. and the State Police Barracks in Revere" (emphasis added) (R.A. 2). The Report continues, with Phonesavanh accentuating that:

"Just recently there was a bank robbery in Revere, which resulted in a pursuit before the suspect was apprehended in Boston. Prior to that another robbery occurred where the suspect crashed his vehicle in Revere and led Troopers and Police Officers on a manhunt before being apprehended. Recently, Troopers from the State Police Barracks in Revere seized firearms and narcotics from motor vehicle stops in the Chelsea and Revere area. These are just some examples of the crimes that plague the area" (emphasis added) (R.A. 2).

² Massachusetts State Police Officer John Phonesavanh's Arrest Report (Report) was admitted by the Commonwealth as an Exhibit during the Hearing over the objection of the Appellant's Hearing Counsel (Counsel) (R.A. 1-6) (T. at 9). The Report contains personally identifiable information, and therefore, as with the Minutes, has been submitted here as part of an impounded appendix.

Upon approaching the driver's side of the Envoy, Phonesavanh instructed the operator, Elizabeth Pagan (Pagan), who was wearing her seat belt, to produce a driver's license and vehicle registration (R.A. 2). Phonesavanh also instructed both passengers in the Envoy to produce identification (R.A. 14). The Report notes that Phonesavanh identified the rear seat passenger, who was seated directly behind Pagan and was not wearing his seat belt, as John Brown (Brown); and that Phonesavanh identified the front seat passenger, who was wearing his seat belt and produced a Massachusetts Identification Card, as Velasquez (R.A. 2).

Once identification was obtained from Pagan, Brown and Velasquez, Phonesavanh returned to his patrol vehicle and used the vehicle's computer terminal to enter Pagan, Brown and Velasquez's information into the Criminal Justice Information Service (CJIS) system and checked their identification information against the Bureau of Probation (BOP) and the Warrant Management System (WMS) (R.A. 2). Phonesavanh's initial background checks of Pagan,

Brown and Velasquez reported no active warrants on any of the three subjects (R.A. 2).

Phonesavanh's background inquiry into Pagan, Brown and Velasquez proceeded beyond a simple warrants check with Phonesavanh testifying during the Hearing that his CJIS check revealed that Velasquez was on probation (T. at 25-26). The Report also notes that Phonesavanh's BOP/WMS checks, which he conducted through his vehicle's computer terminal and Station A Dispatch, revealed that Brown had a prior firearm conviction and a 2017 indecent assault and battery on a child under the age of 14, which required Brown to register as a level 3 sex offender (R.A. 2). The Report indicates that "this check also revealed Brown was in violation of the MA Sex Offender Registry" (R.A. 2).

During the Hearing, Velasquez's Hearing Counsel (Counsel) produced a copy of a CJIS warning and attempted to question Phonesavanh about that alert, which instructs officers as follows:

"•••SEX OFFENDER REGISTRY INFORMATION T •
THE SUBJECT IDENTIFIED IN THE FOLLOWING
RECORD WITH NCIC/X072S59661 IS REGISTERED AS
A SEX OFFENDER. DO NOT SEARCH, DET7IN
[sic], OR ARREST BASED SOLELY ON THIS

RECORD. ADDITIONAL INFORMATION REGARDING SUBJECT MAY BE AVAILABLE FROM THE INTERSTATE IDENTIFICATION INDEX." (R.A. 60).

Phonesavanh's Hearing testimony regarding the CJIS warning is as follows:

Q.: "Officer, I'm showing you a document that's a printout from discovery. I'll also show you one that I've blown up to be a little bit bigger print, easier to read. Is that a copy of what you would have seen on your screen describing the sex offender status of Mr. Brown?"

A.: "If I clicked on a different prompt, but I personally didn't see this screen."

Q.: "Well, you saw some screen from CJIS about his sex offender status, right?"

A.: "I did, sir."

Q.: "And it was a different screen than that information?"

A.: "Yes, sir."

Q.: "Okay. Looking at that information, does that appear to be CJIS information about Mr. Brown?"

A.: "It does, sir."

Q.: "And that describes his sex offender status, right?"

A.: "Yes, sir."

Q.: "And that's simply a different click screen than the one you looked at?"

A.: "Yes, sir."

Q.: "All right. Is it the same information?"

A.: "This is a little bit more information but -- "

Q.: "That's more information about his status than you looked at?"

A.: "Yes, sir³" (T. at 25-27).

The Commonwealth's Hearing Counsel

(Commonwealth), without stating grounds, objected to Counsel's line of questioning (T. at 27). The Court sustained the Commonwealth's groundless objection (T. at 27). Counsel redirected, asking Phonesavanh the following:

Q.: "Well, fair to say that at least that information says that he's a sex offender, right?"

A.: "It does, sir."

Q.: "It describes his status?"

3 Phonesavanh's testimony confirmed that he was aware of the CJIS warning, but that he apparently chose not to view the screen that instructs officers not to search, detain, or arrest based solely on the displayed information (T. at 25-27). Repeated attempts to shed light on exactly what Phonesavanh saw while conducting his CJIS search were thwarted at the Hearing by the Court and by the Commonwealth during both the Grand Jury and the Hearing (R.A. 34-38) (T. at 24-29).

A.: "It does, sir."

Q.: "It describes his address?"

A.: "Yes, sir."

Q.: "And then toward the bottom it -- there's a caution from NCIC, right" (T. at 27)?

Before Phonesavanh could answer, the Commonwealth interjected with a second groundless objection, which the Court again sustained (T. at 27-28)⁴. Counsel redirected again, asking Phonesavanh: "Looking at this line right here, which starts with five asterisks and then 'warning'; do you see that" (T. at 28)? The Commonwealth offered a third groundless objection, to which the Court responded: "That objection's sustained. Sustained. Next question" (T. at 28). Counsel tried once more to redirect, asking Phonesavanh:

4 Velasquez directs this Court to the Commonwealth's similar interjections when like questions were raised during the Special Suffolk County Grand Jury (Grand Jury) (R.A. 34-38). Specifically, the Commonwealth refused to allow Phonesavanh to answer any juror questions regarding the exit order that Phonesavanh gave to Brown; and the Commonwealth repeatedly insisted that the Grand Jurors' questions regarding Phonesavanh's exit order were questions of law for a judge and not fact for a jury (R.A. 34-38).

Q.: "In the screen that you saw, did it have that warning?"

A.: "In -- in the screen I saw, it did not, sir. Not that -- not that I recall."

Q.: "You don't recall any screen that said: 'Warning. Do not arrest. Contact us first'" (T. at 28)?

The Commonwealth offered a fourth groundless objection (T. at 28). The Court allowed Phonesavanh to answer the question (T. at 28). Phonesavanh replied:

A.: "I -- on the prompt that I clicked, I did not, sir. I did not see that."

Q.: "On the prompt that you saw, did it say that Mr. Brown -- " (T. at 28).

Before Counsel could complete his question, the Court, without any prompting from the Commonwealth, stopped Counsel and made the following pronouncement:

"So counsel, this is clearly -- this is clearly a motion to suppress. I -- I'm not going to have a whole hearing on a motion to suppress. I mean, even if you suppress the evidence, the case law is clear that it doesn't implicate the probation surrender here. I -- I'll give you some lee -- I understand, I'll give you some leeway, but I have a whole lot of people here. I'm just not going to make this into a motion to suppress hearing" (emphasis added) (T. at 28-29).

The Report and Phonesavanh's Hearing testimony demonstrate that Phonesavanh's decision that "Brown was in violation of the MA Sex Offender Registry" was based solely on the information Phonesavanh gleaned from the CJIS system (R.A. 2) (T. at 14). Likewise, Phonesavanh's arrest decision and subsequent exit order to Brown were also based solely on the sex offender registry information Phonesavanh viewed on his vehicle's CJIS terminal (R.A. 2) (T. at 14)⁵. Phonesavanh's inquiry and knowledge of the probationary statuses of Brown and Velasquez along with the timing of Phonesavanh's decision regarding Brown's arrest and subsequent exit order are necessary factual components to this Court's inquiry and are punctuated by Phonesavanh's own Hearing testimony:

Q.: "So the three people were in the car, and you were in your cruiser doing this research, right?"

⁵ Velasquez acknowledges that the Report states that when Phonesavanh re-approached the brown colored GMC Envoy displaying New Hampshire license number 4280517 (Envoy) he asked Brown where he currently resides (R.A. 3). Nevertheless, the Report, as well as Phonesavanh's subsequent testimony at both the Grand Jury and the Hearing, firmly establish that the arrest and exit order decisions were made prior to Phonesavanh exiting his patrol car and prior to his inquiry with Brown (R.A. 2, 16-17) (T. at 29-30).

A.: "Queries, yes, sir."

Q.: "Queries, okay. And then at some point you decided to arrest Mr. Brown?"

A.: "Yes, sir."

Q.: "Okay. And so you went back to the cruiser -- or back to the car and asked Mr. Brown to get out, right?"

A.: "Yes, sir" (T. at 29-30).

Upon seeing Brown's CJIS sex offender registry information Phonesavanh "decided to arrest Mr. Brown ... re-approached the -- driver's side to place Mr. Brown in custody ... [and] asked Mr. Brown to get out" (T. at 14, 29-30). Phonesavanh placed Brown in handcuffs as Brown was exiting the Envoy (R.A. 19).

After making his arrest decision, issuing the exit order to Brown and securing him in handcuffs, Phonesavanh observed what he believed to be a partially covered firearm in the middle of the backseat (R.A. 19). Phonesavanh subsequently secured that firearm, pointed it at the two front seat occupants, Pagan and Velasquez, and radioed for backup (T. at 16). Phonesavanh held Pagan and Velasquez at gunpoint until backup officers arrived (T. at 16-17). When backup officers arrived, Phonesavanh moved to

secure Brown in his patrol car (T. at 17). While Phonesavanh was securing Brown in his patrol car, Revere Police Officer Dennis Hickey (Hickey) gave Velasquez an exit order and removed him from the front passenger seat of the Envoy (R.A. 3) (T. at 17). While testifying at the Hearing, Phonesavanh's memory became exhausted and Phonesavanh read the Report to refresh his memory (T. at 18). After reading the Report, Phonesavanh testified that Hickey told him that prior to Velasquez exiting the Envoy Velasquez stated to Hickey: "'I have one in my waistband; make sure you put that in the report.' He [Velasquez] further stated that 'I'm going to beat the case' because I -- because he had no probable cause for the stop" (R.A. 3) (T. at 18).

Counsel's closing argument included reference to this Court's holding in Commonwealth v. Olsen, 405 Mass. 491 (1989) (T. at 34). Specifically, Counsel cited to Commonwealth v. Jahmil Sheppard, 34 Mass. L. Rptr. No. 294 (June 29, 2017), in which Superior Court Judge Paul D. Wilson (Wilson) suppressed evidence at a Final Probation Surrender Hearing, and in doing so, cited this Court's holding in Olsen. In the Sheppard

ruling, Wilson stated that his decision to suppress the evidence was:

"a matter of first impression in Massachusetts. However, the stage was set for today's decision in Commonwealth v. Olsen, 405 Mass. 491, 491 (1989). There the Supreme Judicial Court ruled that unconstitutionally obtained evidence was nonetheless admissible at a probation revocation proceeding – but only because 'the police who unlawfully obtained the evidence neither knew nor had reason to know of the probationary status of the person whose property was seized.' Id. at 491. The Olsen court 'expressly [left] open the question whether the police officer's knowledge of the probationer's status would compel a different result.' Id. at 496.

In today's case, I must answer that open question. I now hold that illegally obtained evidence should be excluded in a probation revocation hearing where the police officers who conducted the unconstitutional search knew or had reason to know that the person whose property was searched was a probationer.

Two predominant rationales underlie the suppression of evidence under the exclusionary rule: 1) deterrence of unlawful searches and seizures by the police; and 2) preservation of judicial integrity by 'disassociating the courts from unlawful [police] conduct.' Commonwealth v. Long, 476 Mass. 526, 535–36 (2017). My holding today is consistent with these rationales. To allow the admission of illegally obtained evidence at a probation revocation hearing while excluding it at trial might very well lead police officers to 'discount the fact that such evidence was inadmissible at a criminal trial, believing that incarceration

of the probationer would instead be achieved through the revocation of his probation.' Payne v. Robinson, 207 Conn. 565, 573 (1988), abrogated on other grounds by Johnson v. Comm'r of Correction, 218 Conn. 403 (1991)" (alteration in original).

Commonwealth v. Jahmil Sheppard, 34 Mass. L. Rptr. No. 294, 6 (June 29, 2017) (ADD. 38-39). Wilson completed his analysis noting that the Sheppard decision "effectuates the twin rationales of deterrence and judicial integrity, and is consonant with Massachusetts jurisprudence under Article 14." Sheppard, 34 Mass. L. Rptr. No. 294 at 8 (ADD. 40).

In response to Counsel's reference to Sheppard, the Court responded: "So I'm aware of Judge Wilson's decision, and a couple things, Judge Wilson is not in [sic] appellate court . . . And I would point out that there is no appellate ruling that indicates that is even the law" (T. at 34). The Court later recessed and noted that the Sheppard decision and the Minutes would be reviewed prior to the issuance of any decision on Velasquez (T. at 41). When the Court returned from recess it pronounced:

"Okay. So I do find him in violation of probation. It's an interesting issue. Even if you look at Judge Wilson's decision, it does talk about what I -- what I said. It

goes into bad faith on the part of the police officers, not simply the persons [sic] on probation, the cases that are cited. I did not hear any evidence of that⁶. And as I said, in the past I have suppressed a case where I felt that there was bad faith. And I wish that someone would take that up on appeal, but it wasn't taken up on appeal. But in any case, so I do find him in violation of probation" (emphasis added) (T. at 42).

(4) ISSUE OF LAW RAISED BY THE APPEAL

Whether a police officer's arrest decision and exit order of a motor vehicle passenger violated the Fourth and Fourteenth Amendments to the Constitution of the United States and articles I, X and XIV of the Massachusetts Declaration of Rights when both the arrest decision and the exit order were based solely upon the officer's research and knowledge of the motor vehicle passenger's probationary status and the officer's willful misuse of a Criminal Justice Information Services (CJIS) Sex Offender Registry Board (SORB) report, and as such, whether all evidence obtained from the unconstitutional search and exit order must be justly suppressed from all proceedings, including probation surrender hearings, so as to preserve judicial integrity by disassociating the courts from unlawful State conduct?

6 The Court's pronouncement that it "did not hear any evidence" of "bad faith" on the part of the police may well be true, but only because the Court repeatedly barred Counsel from inquiring or offering evidence regarding Phonesavanh's knowledge of Brown and Velasquez's probationary statuses, the in-depth roadside investigation of Pagan, Brown and Velasquez, and Phonesavanh's unconstitutional arrest decision and exit order (T. at 24-29, 42).

(5) ARGUMENT

A POLICE OFFICER'S ARREST DECISION AND EXIT ORDER OF A MOTOR VEHICLE PASSENGER VIOLATED THE FOURTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES AND ARTICLES I, X AND XIV OF THE MASSACHUSETTS DECLARATION OF RIGHTS WHEN BOTH THE ARREST DECISION AND THE EXIT ORDER WERE BASED SOLELY UPON THE OFFICER'S RESEARCH AND KNOWLEDGE OF THE MOTOR VEHICLE PASSENGER'S PROBATIONARY STATUS AND THE OFFICER'S WILLFUL MISUSE OF A CRIMINAL JUSTICE INFORMATION SERVICES (CJIS) SEX OFFENDER REGISTRY BOARD (SORB) REPORT, AND AS SUCH, ALL EVIDENCE OBTAINED FROM THE UNCONSTITUTIONAL EXIT ORDER MUST BE JUSTLY SUPPRESSED FROM ALL PROCEEDINGS, INCLUDING PROBATION SURRENDER HEARINGS, SO AS TO PRESERVE JUDICIAL INTEGRITY BY DISASSOCIATING THE COURTS FROM UNLAWFUL STATE CONDUCT.

"The probation revocation proceeding is not a new criminal prosecution." Commonwealth v. Wilcox, 446 Mass. 61, 65 (2006), citing Gagnon v. Scarpelli, 411 U.S. 778, 782 (1973), Olsen, 405 Mass. at 493. "It follows that, at a revocation proceeding, 'a probationer need not be provided with the full panoply of constitutional protections applicable at a criminal trial.'" Id., quoting Commonwealth v. Durling, 407 Mass 108, 112 (1990).

Appellate courts in Massachusetts review findings of fact for clear error, Commonwealth v. Anderson, 448 Mass. 548, 555 (2007), while dispositions of probation violations are evaluated for abuse of discretion.

Commonwealth v. Bukin, 467 Mass. 516, 521 (2014); Barber v. Commonwealth, 353 Mass. 236, 241 (1967). In the Commonwealth, probation revocation proceedings are not subject to strict application of evidentiary rules. Commonwealth v. Molina, 476 Mass. 388, 407 (2017). Instead, there are two overriding principles in probation revocation proceedings: (1) that revocation proceedings must be flexible in nature; and, (2) that all reliable evidence should be considered. Durling, 407 Mass. at 114. "Both of these principles are furthered by not imposing strict evidentiary rules on probation revocation hearings and by allowing the use of reliable hearsay." Id.

Likewise, "[d]ecisions mandating suppression of evidence also do not apply, 'where the police who unlawfully obtained the evidence neither knew nor had reason to know of the probationary status of the person whose property was seized.'" Wilcox, 446 Mass. at 66, quoting Olsen, 405 Mass. at 491. Or, stated the other way, decisions mandating suppression of evidence must apply during probation revocation proceedings where the police who unlawfully obtained the evidence knew or had reason to know of the

probationary status of the person whose property was seized. Id.; United States v. Calandra, 414 U.S. 338, 347 (1974) (purpose of exclusionary rule is to deter unlawful police conduct).

The suppression of unconstitutionally obtained evidence in probation surrender hearings where the police, who unlawfully obtained the evidence, knew or had reason to know of the probationary status of the person whose property was seized is necessary in order to disassociate the courts from unlawful police conduct and preserve judicial integrity. Commonwealth v. Long, 476 Mass. 526, 535-36 (2017). The Commonwealth of Massachusetts has "not adopted the 'good faith' exception for purposes of art. 14 of the Massachusetts Declaration of Rights or statutory violations, focusing instead on whether the violations are substantial and prejudicial." Commonwealth v. Hernandez, 456 Mass. 528, 533 (2010). Where the police, who unlawfully obtained the evidence, knew or had reason to know of the probationary status of the person whose property was seized, suppression of the unconstitutionally obtained evidence is a proper exercise of the judge's "inherent authority to

maintain the dignity necessary to execute judicial powers and preserve the authority of the court." Wilcox, 446 Mass. at 69, citing Dolan v. Commonwealth, 304 Mass. 325, 340-341 (1939), quoting from Cartwright's Case, 114 Mass. 230, 238 (1873).

In reaching the decision in Olsen, the Court opined that "[w]hen the police officers involved in the illegal search and seizure neither know nor have reason to know of the search victim's status as probationer, the deterrent value of excluding the evidence from a probation revocation proceeding is absent." Olsen, 405 Mass. at 494. The Court noted:

"a police officer's zone of primary interest is in gathering evidence with which to convict a defendant of crime. Thus, it is at a criminal trial that the exclusionary rule's remedial objectives are most efficaciously served." (quotations omitted) (citations omitted).

Id. The Olsen Court further reasoned that, it

"cannot realistically be supposed that a police officer, no matter how venal he [or she] may be, will refrain from obeying the law, thereby losing vital case-in-chief evidence, in the vain hope that in exchange he [or she] may obtain evidence which can only be used should it subsequently appear that the victim of such conduct was a [probationer]" (internal quotations omitted)

(citations omitted) (alterations in original).

Id.

The Court recognized that in Olsen it did not have to consider the effect of "egregious police conduct, or conduct that shocks the conscience [and strongly cautioned that it's] decision should not be taken as an invitation to harassment." Id. at 496. As a limiting factor, this Court forewarned that it would "expressly leave open the question whether the police officer's knowledge of the probationer's status would compel a different result." Id. Answering that open question now will not only justly resolve this case but will foreclose the arbitrary administration of justice. Commonwealth v. King, 374 Mass. 5, 20 (1977) (Fourteenth Amendment to United States Constitution does not permit unequal application of impartial laws); Mass. Const. pt. 1, art. I; Mass. Const. pt. 1, art. X; see Sheppard, 34 Mass. L. Rptr. No. 294 at 6-8 (disparate interpretations of Olsen by Superior Courts here and in Sheppard) (ADD. 37-39).

The record in Velasquez establishes that Phonesavanh researched and knew the probationary status of both Brown and Velasquez prior to making his

arrest decision and issuing his exit order to Brown (T. at 24-26). Moreover, Phonesavanh's sole reason for his arrest decision and exit order was the information that he gleaned from the CJIS system; a system that indisputably warns officers against using CJIS information as the sole basis to search, detain or arrest (R.A. 2-3, 60) (T. at 14, 29-30). Furthermore, the premise for the motor vehicle stop in a neighborhood that Phonesavanh classified as a "high crime area" that is "plagued" by "[c]rimes includ[ing] firearms violations, assaults, and narcotics offenses, which are enforced through proactive enforcement" was a civil motor vehicle infraction, a malfunctioning center mounted break light (R.A. 2). Lastly, the evidence presented at the Hearing demonstrated that Phonesavanh not only ignored the CJIS warnings not to search, detain or arrest, but he also made no attempt to ascertain whether Brown had submitted notification of his address change to SORB. See G. L. c. 6, § 178H ("A sex offender required to register pursuant to this chapter who knowingly: . . . (iii) fails to provide notice of a change of address . . . shall be punished in accordance with this section" [emphasis added]);

G. L. c. 6, 178E (h) ("A sex offender required to register pursuant to sections 178C to 178P, inclusive, who intends to move to a different city or town within the commonwealth [sic] shall, not later than ten days prior to establishing such new residence, register by mailing to the board on a form approved by the board and signed under the pains and penalties of perjury"); see also Commonwealth v. Fondakowski, 62 Mass. App. Ct. 939, 940 (2005), quoting Commonwealth v. Altenhaus, 317 Mass. 270, 273 (1944), quoting from Commonwealth v. Horsfall, 213 Mass. 232, 237 (1913) ("knowingly" in criminal statutes imports perception of facts requisite to make up crime).

In Massachusetts, a motor vehicle stop premised on a civil infraction should have resulted in the quick issuance of a traffic citation followed by the immediate release of the subjects and vehicle. See Commonwealth v. Torres, 424 Mass. 153, 158 (1997) (traffic stop must end on production of valid license and registration unless police have grounds that individuals were involved in commission of a crime or other suspicious conduct). Throughout the initial phase of the traffic stop, none of the Envoy's

occupants presented Phonesavanh with any suspicious behavior (T. at 24). Absent any suspicious behavior on behalf of the occupants, Phonesavanh should have quickly issued civil citations to Pagan and Brown and released the vehicle. See Torres, 424 Mass at 159-160, and cited cases (no basis to interrogate passengers after driver produced valid license and registration; search conducted after justifiable threshold inquiry wherein driver produced valid license and registration held impermissible; once officer verified driver's and passenger's licenses and vehicle registration, no grounds existed for further investigation or precautions). There is nothing in the current record that supports Phonesavanh's decision to conduct roadside investigations on Pagan, Brown and Velasquez. See Commonwealth v. King, 389 Mass. 233, 244 (1983) (once licenses and registration documents are verified by the missing and wanted check any justifiable investigation was ended; no reasonable ground for further investigation or precautions).

With a lack of reasonable suspicion or probable cause, but with an impression that he was patrolling a "high crime area" that is "plagued" by "[c]rimes

includ[ing] firearms violations, assaults, and narcotics offenses, which are enforced through proactive enforcement" Phonesavanh could have believed that he risked nothing by exceeding beyond the initial scope of the motor vehicle stop (emphasis added) (R.A. 2). Contra Commonwealth v. Cheek, 413 Mass. 492, 496-497 (1992) (in neighborhood police consider 'high crime area' police may not conduct broad sweep in hopes of apprehending suspects; permitting investigative stops under sparse facts encourages intrusive police practices; problems facing high crime areas not resolved by denying Constitution protections); see Olsen, 405 Mass. at 495-96, quoting from Commonwealth v. Fini, 403 Mass. 567, 570 (1988) (half measures not enough, exclusion of such illegally obtained evidence for all purposes acts as further deterrent). As noted, the initial phase of the traffic stop was benign presenting Phonesavanh with no reason, beyond his belief that he patrols a "high crime" area, to think that this traffic stop would result in anything more than the issuance of a civil citation (R.A. 2) (T. at 24). As such, Phonesavanh risked nothing by proceeding beyond the initial

confines of the civil motor vehicle stop; investigating Pagan, Brown and Velasquez; and making his arrest decision. Contra Olsen, 405 Mass at 494 (postulating police will obey law in fear of losing case-in-chief evidence); see Sheppard, 34 Mass. L. Rptr. No. 294 at 6 (police may discount admissibility at trial believing incarceration will be achieved through probation revocation [quotations omitted; citations omitted]) (ADD. 38).

(6) STATEMENT OF REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

The facts of this case are unique and present this Court with the opportunity to answer a question that it specifically left open in Olsen: whether a police officer's knowledge of the probationer's status would compel the suppression of unconstitutionally obtained evidence prior to a probation surrender hearing? The consideration and application of a motion to suppress could have enlightened the Velasquez Court to the Commonwealth's unconstitutional conduct, and a ruling by this Court could render such findings applicable in probation surrender hearings. Absent intervention by this Court, probationers will

continue to lose their liberty through the Commonwealth's use of illegally obtained evidence presented during probation surrender hearings. Failing to take action on this issue would be akin to the tacit endorsement of the continued obfuscation of unconstitutional State action.

In sum, Velasquez prays that this Honorable Court will grant his application for direct appellate review; that it will exercise its Superintendent powers to preserve the Court's integrity by separating the Court from the Commonwealth's unlawful conduct; and that it will prevent arbitrary outcomes by rectifying the existing disparity among the lower courts.

Respectfully submitted,
Steven Velasquez,
By his attorney,

/s/ Paul B. Stewart

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Date: July 3, 2019

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Constitutional ProvisionsU.S. Const. amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the

United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Mass. Const. pt. 1, art. I

All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness. [Annulled by Amendments, Art. CVI.]

Mass. Const. Article CVI

All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.

Mass. Const. pt. 1, art. X

Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor. [See Amendments, Arts. XXXIX, XLIII, XLVII, XLVIII, The Initiative, II, sec. 2, XLIX, L, LI and XCVII.]

Mass. Const. pt. 1, art. XIV

Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: and no warrant ought to be issued but in cases, and with the formalities prescribed by the laws. [See Amendments, Art. XLVIII, The Initiative, II, sec. 2].

StatutesPart II, Title III, Chapter 209A, Section 7

Abuse prevention orders; domestic violence record search; service of order; enforcement; violations

When considering a complaint filed under this chapter, a judge shall cause a search to be made of the records contained within the statewide domestic violence record keeping system maintained by the office of the commissioner of probation and shall review the resulting data to determine whether the named defendant has a civil or criminal record involving domestic or other violence. Upon receipt of information that an outstanding warrant exists against the named defendant, a judge shall order that the appropriate law enforcement officials be notified and shall order that any information regarding the defendant's most recent whereabouts shall be forwarded to such officials. In all instances where an outstanding warrant exists, a judge shall make a finding, based upon all of the circumstances, as to whether an imminent threat of bodily injury exists to the petitioner. In all instances where such an imminent threat of bodily injury is found to exist, the judge shall notify the appropriate law enforcement officials of such finding and such officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

Whenever the court orders under sections eighteen, thirty-four B, and thirty-four C of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, sections three, four and five of this chapter, or sections fifteen and twenty of chapter two hundred and nine C, the defendant to vacate, refrain from abusing the plaintiff or to have no contact with the plaintiff or the plaintiff's minor child, the register or clerk-magistrate shall transmit two certified copies of each such order and one copy of the complaint and summons forthwith to the appropriate law enforcement agency which, unless otherwise ordered by the court, shall serve one copy of each order upon the defendant, together with a copy of the complaint, order and summons and notice of any

suspension or surrender ordered pursuant to section three B of this chapter. Law enforcement agencies shall establish adequate procedures to ensure that, when effecting service upon a defendant pursuant to this paragraph, a law enforcement officer shall, to the extent practicable: (i) fully inform the defendant of the contents of the order and the available penalties for any violation of an order or terms thereof and (ii) provide the defendant with informational resources, including, but not limited to, a list of certified batterer intervention programs, substance abuse counseling, alcohol abuse counseling and financial counseling programs located within or near the court's jurisdiction. The law enforcement agency shall promptly make its return of service to the court.

Law enforcement officers shall use every reasonable means to enforce such abuse prevention orders. Law enforcement agencies shall establish procedures adequate to insure that an officer on the scene of an alleged violation of such order may be informed of the existence and terms of such order. The court shall notify the appropriate law enforcement agency in writing whenever any such order is vacated and shall direct the agency to destroy all record of such vacated order and such agency shall comply with that directive.

Each abuse prevention order issued shall contain the following statement: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

Any violation of such order or a protection order issued by another jurisdiction shall be punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than two and one-half years in a house of correction, or by both such fine and imprisonment. In addition to, but not in lieu of, the forgoing penalties and any other sentence, fee or assessment, including the victim witness assessment in section 8 of chapter 258B, the court shall order persons convicted of a crime under this statute to pay a fine of \$25 that shall be transmitted to the treasurer for deposit into the General Fund. For any

violation of such order, or as a condition of a continuance without a finding, the court shall order the defendant to complete a certified batterer's intervention program unless, upon good cause shown, the court issues specific written findings describing the reasons that batterer's intervention should not be ordered or unless the batterer's intervention program determines that the defendant is not suitable for intervention. The court shall not order substance abuse or anger management treatment or any other form of treatment as a substitute for certified batterer's intervention. If a defendant ordered to undergo treatment has received a suspended sentence, the original sentence shall be reimposed if the defendant fails to participate in said program as required by the terms of his probation. If the court determines that the violation was in retaliation for the defendant being reported by the plaintiff to the department of revenue for failure to pay child support payments or for the establishment of paternity, the defendant shall be punished by a fine of not less than one thousand dollars and not more than ten thousand dollars and by imprisonment for not less than sixty days; provided, however, that the sentence shall not be suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served sixty days of such sentence.

When a defendant has been ordered to participate in a treatment program pursuant to this section, the defendant shall be required to regularly attend a certified or provisionally certified batterer's treatment program. To the extent permitted by professional requirements of confidentiality, said program shall communicate with local battered women's programs for the purpose of protecting the victim's safety. Additionally, it shall specify the defendant's attendance requirements and keep the probation department informed of whether the defendant is in compliance.

In addition to, but not in lieu of, such orders for treatment, if the defendant has a substance abuse problem, the court may order appropriate treatment for

such problem. All ordered treatment shall last until the end of the probationary period or until the treatment program decides to discharge the defendant, whichever comes first. When the defendant is not in compliance with the terms of probation, the court shall hold a revocation of probation hearing. To the extent possible, the defendant shall be responsible for paying all costs for court ordered treatment.

Where a defendant has been found in violation of an abuse prevention order under this chapter or a protection order issued by another jurisdiction, the court may, in addition to the penalties provided for in this section after conviction, as an alternative to incarceration and, as a condition of probation, prohibit contact with the victim through the establishment of court defined geographic exclusion zones including, but not limited to, the areas in and around the complainant's residence, place of employment, and the complainant's child's school, and order that the defendant to wear a global positioning satellite tracking device designed to transmit and record the defendant's location data. If the defendant enters a court defined exclusion zone, the defendant's location data shall be immediately transmitted to the complainant, and to the police, through an appropriate means including, but not limited to, the telephone, an electronic beeper or a paging device. The global positioning satellite device and its tracking shall be administered by the department of probation. If a court finds that the defendant has entered a geographic exclusion zone, it shall revoke his probation and the defendant shall be fined, imprisoned or both as provided in this section. Based on the defendant's ability to pay, the court may also order him to pay the monthly costs or portion thereof for monitoring through the global positioning satellite tracking system.

In each instance where there is a violation of an abuse prevention order or a protection order issued by another jurisdiction, the court may order the defendant to pay the plaintiff for all damages including, but not limited to, cost for shelter or emergency housing, loss of earnings or support, out-

of-pocket losses for injuries sustained or property damaged, medical expenses, moving expenses, cost for obtaining an unlisted telephone number, and reasonable attorney's fees.

Any such violation may be enforced in the superior, the district or Boston municipal court departments. Criminal remedies provided herein are not exclusive and do not preclude any other available civil or criminal remedies. The superior, probate and family, district and Boston municipal court departments may each enforce by civil contempt procedure a violation of its own court order.

The provisions of section eight of chapter one hundred and thirty-six shall not apply to any order, complaint or summons issued pursuant to this section.

RulesMass. R. A. P. 11

(a) Application; when filed; grounds

An appeal within the concurrent appellate jurisdiction of the Appeals Court and Supreme Judicial Court shall be docketed in the Appeals Court before a party may apply to the Supreme Judicial Court for direct appellate review. Within 21 days after the docketing of an appeal in the Appeals Court, any party to the case (or 2 or more parties jointly) may apply in writing to the Supreme Judicial Court for direct appellate review, provided the questions presented by the appeal are (1) questions of first impression or novel questions of law which should be submitted for final determination to the Supreme Judicial Court; (2) questions of law concerning the Constitution of the Commonwealth or questions concerning the Constitution of the United States which have been raised in a court of the Commonwealth; or (3) questions of such public interest that justice requires a final determination by the full Supreme Judicial Court.

(b) Contents of application; form

The application for direct appellate review shall contain, in the following order: (1) a request for direct appellate review; (2) a statement of prior proceedings in the case; (3) a short statement of facts relevant to the appeal; (4) a statement of the issues of law raised by the appeal, together with a statement indicating whether the issues were raised and properly preserved in the lower court; (5) a brief argument thereon (consisting of not more than either 10 pages of text in monospaced font or 2,000 words in proportional font, as defined in Rule 20(a)(4)(B)) including appropriate authorities, in support of the applicant's position on such issues; and (6) a statement of reasons why direct appellate review is appropriate. A copy of the docket entries shall be appended to the application. The applicant shall also append a copy of any written decision, memorandum, findings, rulings, or report of the lower court relevant to the appeal. The application shall comply with the requirements of Rule 20(a), and shall contain a certification of such compliance, including a

statement of how compliance with the foregoing length limit was ascertained, as specified in Rule 16(k).

(c) Response; form

Within 14 days after the filing of the application, any other party to the case may, but need not, file and serve a response thereto (consisting of not more than either 10 pages of text in monospace font or 2,000 words in proportional font, as defined in Rule 20(a)(4)(B)) setting forth reasons why the application should or should not be granted. The response shall not restate matters described in Rule 11(b)(2) and (3) unless the party is dissatisfied with the statement thereof contained in the application. The response shall comply with the requirements of Rule 20(a), and shall contain a certification of such compliance, including a statement of how compliance with the foregoing length limit was ascertained, as specified in Rule 16(k). A response may be filed in a different form as permitted by the court.

(d) Filing; service

One copy of the application and of each response shall be filed in the office of the clerk of the full Supreme Judicial Court. Filing and service of the application and of any response shall comply with Rule 13.

(e) Effect of application upon appeal

The filing of an application for direct appellate review shall not extend the time for filing briefs or doing any other act required to be done under these rules.

(f) Vote of direct appellate review; certification

If any 2 justices of the Supreme Judicial Court vote for direct appellate review, or if a majority of the justices of the Appeals Court shall certify that direct appellate review is in the public interest, an order allowing the application (or transferring the appeal sua sponte) or the certificate, as the case may be, shall be transmitted to the clerk of the Appeals Court with notice to the lower court. The clerk of the Appeals Court shall forthwith transmit to the clerk of

the full Supreme Judicial Court all documents filed in the case.

(g) Cases transferred for direct review; time for serving and filing briefs

In any appeal transferred to the full Supreme Judicial Court from the Appeals Court:

(1) If at the time of transfer all parties have served and filed briefs in the Appeals Court, no further briefs may be filed by the parties except that a reply brief may be served and filed on or before the last date allowable had the case not been transferred, or within 14 days after the date on which the appeal is docketed in the full Supreme Judicial Court, whichever is later.

(2) If at the time of transfer only the appellant's brief has been served and filed in the Appeals Court the appellant may, but need not, serve and file an amended brief within 21 days after the date on which the appeal is docketed in the full Supreme Judicial Court. The appellee shall serve and file a brief within 30 days after service of any amended brief of the appellant, or within 50 days after the date on which the appeal is docketed in the full Supreme Judicial Court, whichever is later.

(3) Service and filing of a reply brief shall comply with Rule 19.

(4) If at the time of transfer to the full Supreme Judicial Court no party to the appeal has served or filed a brief, the appellant shall serve and file a brief within 21 days after the date on which the appeal is docketed in the full Supreme Judicial Court or within 40 days after the date on which the appeal was docketed in the Appeals Court, whichever is later.

Docket Entries

[Skip to main content](#)

1684CR00247 Commonwealth vs. Velasquez, Steven

- Case Type
- Indictment
- Case Status
- Open
- File Date
- 03/31/2016
- DCM Track:
- C - Most Complex
- Initiating Action:
- A&B, VIOL ABUSE PREVENTION ORDER c265 §13A(b)
- Status Date:
- 01/18/2018
- Case Judge:
- Wilkins, Hon. Douglas H
- Next Event:

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

Docket Information

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
03/31/2016	Indictment(s) returned	1	Image
03/31/2016	Commonwealth Jessica Mary Erickson, Esq.'s Motion for an arrest warrant filed	2	
03/31/2016	Endorsement on Motion , (#2.0): ALLOWED		
03/31/2016	Issued: Straight Warrant issued on 03/31/2016 for Velasquez, Steven		
04/11/2016	Defendant arraigned before Court.		
04/11/2016	Recalled: Straight Warrant cancelled on 04/11/2016 for Velasquez, Steven		
04/11/2016	Appointment made for the purpose of Case in Chief by Judge Lisa B Medeiros.		
04/11/2016	Attorney appearance On this date Michael Roitman, Esq. added for Defendant Steven Velasquez		
04/11/2016	Court inquires of Commonwealth if abuse, as defined by G.L. c. 209A, § 1, is alleged to have occurred immediately prior to or in connection with the charged offense(s).		
04/11/2016	Court finds abuse is alleged in connection with the charged offense. G.L. c. 276, § 56A.		
04/11/2016	Defendant waives reading of indictment		
04/11/2016	Plea of not guilty entered on all charges.		
04/11/2016	Issued on this date: Mittimus Without Bail Sent On: 04/11/2016 12:19:03		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
04/11/2016	Event Result: The following event: Arraignment scheduled for 04/11/2016 09:00 AM has been resulted as follows: Result: Held as Scheduled Defendant comes into Court Case continued by agreement to 4/22/16 Hearing re: 58A/ Bail Hearing Court Room 704 1st Session Case schedule Track C 2nd Session PTC 5/17/16 CM Session PTH 8/17/16 1St Session 704 FPTH 4/10/17 @ 2PM 2ND Session PTD 4/25/17 @ 9AM 2ND Session (Jail list 4/22/2016 and 5/17/2016) Medeiros, MAG - J. Erickson, ADA - M. Roitman, Atty - FTR		
04/11/2016	Commonwealth 's Statement of the case , filed	3	
04/11/2016	Commonwealth 's Motion for protective order, filed	4	
04/11/2016	Endorsement on , (#4.0): ALLOWED as endorsed		
04/11/2016	Commonwealth 's Motion for pretrial detention, filed	5	
04/11/2016	Case assigned to: DCM Track C - Most Complex was added on 04/12/2016 (Notices sent to Jessica Erickson, ADA and Michael Roitman, Atty)		
04/22/2016	Not in court Continued to 4-28-16 by agreement re 58A hearing(J). Jail ilst Krupp, J. - G Ogus/J. Erickson, ADA. - M. Roitman, Atty. - FTR		
04/22/2016	Scheduled: Event: Bail Review (58A) Date: 04/28/2016 Time: 09:30 AM Result: Held as Scheduled		
04/22/2016	Defendant 's Motion for funds filed and allowed up to \$750	6	
04/22/2016	Defendant 's Motion for issuance of a summons re Parole board filed and allowed without objection Summons to issue returnable 5-13-16	7	
04/22/2016	Defendant 's Motion for issuance of a summons re Dept of Crrrections filed and allowed Summons to issue returnable 5-13-16	8	
04/25/2016	Notice and Summons (Dwyer) issued to Keeper of Records, Mass. Parole Board and Dept of Corrections; Souza Baranowski Correctional Center to produce privileged records by 05/13/2016 to the Clerk of the Superior Court.		
04/28/2016	Brought into court. Hearing re 58A bail After hearing, Comm's motions re 58a P#5 taken under advisement		
04/28/2016	Defendant 's Motion for issuance of a summons re T Mobile USA Inc filed and allowed Summons to issue Returnable 5-13-16 Krupp, J. - J. Erickson, ADA. - M. Roitman, Atty. - FTR Applies To: Mobile. USA, Inc., T- (Keeper of Record)	9	
04/28/2016	ORDER: Re: T Mobile USA Inc. records filed	10	
04/28/2016	Notice and Summons (Dwyer) issued to Keeper of Records T-Mobile USA, Inc of to produce records by 05/13/2016 to the Clerk of the Superior Court. Applies To: Mobile. USA, Inc., T- (Keeper of Record)	11	
04/28/2016	Defendant 's Submission for his dangerousness hearing	9.1	
05/09/2016	Business Records received from Dept of Correctional		
05/12/2016	General correspondence regarding Massachusetts Parole Board's files Motion to Quash Summons for Presumptively Privileged Records and Request for a Hearing on Production of Records Pursuant to Mass. R. Crim. P. 17. w/affidavit	12	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/17/2016	Event Result: Deft brought into Court. The following event: Pre-Trial Conference scheduled for 05/17/2016 09:30 AM has been resulted as follows: Result: Not Held Reason: Not reached by Court Appeared: Defendant Velasquez, Steven Attorney Roitman, Esq., Michael Attorney Erickson, Esq., Jessica Mary Kaczmarek, MAG - FTR		
05/17/2016	Commonwealth's Notice of Discovery filed.	13	
05/25/2016	Brought into court As to P#12 denied after hearing Continued by agreement to 6-8-16 re rule 17 motion(J). Jail list Krupp, J. - J. Erickson, ADA. - L. Weierman, Atty Parole Board. - M. Roitman, Atty. - FTR.		
05/25/2016	Defendant's Motion for issuance of a summons re Mass Dept of correction filed and allowed	14	
05/25/2016	ORDER: filed. Summons to issue	15	
05/25/2016	Defendant's Motion for issuance of a summons re Boston Housing Authority with affidavit	16	
05/25/2016	Notice and Summons (Dwyer) issued to Keeper of Records, MCI - Cedar Junction to produce privileged records by 06/24/2016 to the Clerk of the Superior Court.		
05/25/2016	Defendant's Motion for re cellphone expert filed and allowed up to \$1000 CPCS rates	17	
06/07/2016	ORDER: As to P#5, After hearing Allowed. See findings and order filed this day. Krupp, J Findings and order of detention filed Copies given in hand on 6-8-16	18	
06/08/2016	Event Result: The following event: Jury Trial scheduled for 04/25/2017 09:00 AM has been resulted as follows: Result: Canceled Reason: Joint request of parties		
06/08/2016	Event Result: The following event: Pre-Trial Hearing scheduled for 08/17/2016 09:00 AM has been resulted as follows: Result: Canceled Reason: Joint request of parties		
06/08/2016	Brought into court Deft remains on MGL 276, Ch 58A status Continued to 8-8-16 re FPTH(806), to 8-15-16 re trial(806) and by agreement to 6-24-16 re discovery motions(J) Krupp, J. - J. Erickson, ADA. M. Roitman, Atty. - FTR.		
06/08/2016	Commonwealth's Motion for protective order filed and after hearing, Denied	19	
06/16/2016	Business Records received from Massachusetts Department of Correction		
06/21/2016	Defendant's Motion to dismiss indictments charging intimidation of a witness	20	
06/23/2016	Defendant's Motion for issuance of a summons	22	
06/24/2016	Event Result: The following event: Hearing RE: Discovery Motion(s) scheduled for 06/24/2016 09:30 AM has been resulted as follows: Result: Held as Scheduled		
06/24/2016	Defendant's Motion to dismiss	21	
06/24/2016	Suffolk County District Attorney files certificate of compliance.	23	
06/29/2016	Not in court - Presence waived After hearing P#20, 21 Rule 17 motions taken under advisement P#22 Re records taken under advisement Continued to 7-22-16 hearing re discovery status by agreement(J). Deft excused Krupp, J. - P. Cheng, ADA. - M. Roitman, Atty. - FTR.		
06/29/2016	ORDER: Comm's memorandum in opposition to the deft's motion to dismiss	24	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/30/2016	ORDER: As to P#20 after hearing, Offense 009 witness intimidation dismissed otherwise denied, see Memorandum filed this day As to P#21 Denied See Memorandum filed this day Memorandum and Order on Deft's motion to dismiss ifled ADA Cheng and Atty Roitman notified with copy	25	
06/30/2016	ORDER: As to P#22 allowed. Records returnable by 7-22-16 Summons to issue to Dept of Children and Families		
06/30/2016	Defendant 's Motion for Contempt against T-Mobile USA. Inc.	26	
06/30/2016	Endorsement on Motion for Contempt against T-Mobile USA, INC., (#26.0): ALLOWED		
06/30/2016	ORDER: to show Cause (T-Mobile Inc.)	27	
07/01/2016	Offense Disposition: Charge #9 WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B Date: 06/30/2016 Method: Hearing Code: Dismissed Judge: Krupp, Hon. Peter B		
07/01/2016	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Philip Cheng, Esq.		
07/01/2016	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Michael Roitman, Esq. Attorney: Philip Cheng, Esq.		
07/05/2016	The following form was generated: Notice to Appear Sent On: 07/05/2016 16:22:25		
07/06/2016	Notice and Summons (Dwyer) issued to Keeper of Records, Department of Children and Families to produce privileged records by 07/22/2016 to the Clerk of the Superior Court.	28	
07/07/2016	Business Records received from T-Mobile		
07/11/2016	Appointment made for the purpose of Case in Chief by Judge Lisa B Medeiros.		
07/20/2016	Business Records received from T-Mobile		
07/22/2016	Not in court Continued by order of court to 8-2-16 status re records(J) Desmond, J. - P. Cheng, ADA. - M. Roitman, Atty. - FTR.		
07/22/2016	Defendant 's Motion for issuance of a summons for production of documents from Roxbury T Mobile with affidavit filed and allowed Summons to issue returnable 8-1-16 Both counsel may have copy of DCF records	29	
07/22/2016	Commonwealth 's Notice of discovery II	30	
07/26/2016	Notice and Summons (Dwyer) issued to Keeper of Records, Roxbury T-Mobile to produce privileged records by 08/01/2016 to the Clerk of the Superior Court.		
07/28/2016	Other Records received from DCF "DWYER RECORDS" (Filed on 14th floor on the Dwyer Record Shelves)		
08/02/2016	Event Result: The following event: Conference to Review Status scheduled for 08/02/2016 09:30 AM has been resulted as follows: Result: Held as Scheduled		
08/02/2016	Defendant 's Motion for permission to review and copy documents produced by DCF. Filed and allowed as to both Commonwealth and defense	31	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/08/2016	Event Result:Deft not in court The following event: Final Pre-Trial Conference scheduled for 08/08/2016 02:00 PM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date. Continued to 8/9/16 for motions at 12:00pm 2nd session before Giles,J and 8/16/16 for trial before Giles,J 2nd session Jail list both dates. Miller,J; P.Chang,ADA; M.Roitman,Atty; FTR		
08/08/2016	Event Result: The following event: Jury Trial scheduled for 08/15/2016 09:00 AM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date		
08/08/2016	Joint Pre-Trial Memorandum filed:	32	
08/08/2016	Defendant 's Motion for motion to dismiss the indictment charging violation of a restraining order	33	
08/08/2016	Defendant 's Motion for attorney conducted panel voir dire of all prospective jurors	34	
08/08/2016	Defendant 's Motion in limine to exclude prior or subsequent bad acts	35	
08/08/2016	Defendant 's Motion in limine to preclude use of the term victim	36	
08/08/2016	Defendant 's Motion in limine to introduce records of T-Mobile USA,Inc	37	
08/08/2016	Defendant 's Motion in limine to introduce records of Ma Dept of Corrections	38	
08/08/2016	Defendant 's Motion in limine to introduce records of Boston Housing Authority	39	
08/08/2016	Defendant 's Motion in limine to admit records of Ma Parole Board	40	
08/08/2016	Commonwealth 's Motion in limine to exclude certain evidence of prior trial and subsequent appeal	41	
08/08/2016	Commonwealth 's Motion in limine to introduce prior "bad acts" by the Deft at trial	42	
08/08/2016	Commonwealth 's Motion in limine to admit certified copy of 209A restraining order	43	
08/08/2016	Commonwealth 's Motion in limine regarding admissibility of Medical records	44	
08/08/2016	Commonwealth 's Motion in limine to admit in-court identification of the Deft	45	
08/08/2016	Commonwealth 's Motion in limine regarding the admissibility of T-Mobile phone records	46	
08/08/2016	Commonwealth 's Motion for Judicial inquiry into criminal history records of potential trial jurors....	47	
08/09/2016	Event Result: Status hearing held The following event: Motion Hearing scheduled for 08/09/2016 12:00 PM has been resulted as follows: Result: Held as Scheduled Brought into court.		
08/09/2016	Defendant 's Motion for complaint for contempt of court filed and allowed. Order files ans issued to T Mobile for show cause for 8/16/16. Case on track for trial 8/16/16 before Giles, J, in room 806. Giles, J. Applies To: Velasquez, Steven (Defendant); Roitman, Esq., Michael (Attorney) on behalf of Velasquez, Steven (Defendant); Cheng, Esq., Philip (Attorney) on behalf of Suffolk County District Attorney (Prosecutor)	48	
08/16/2016	Case heard in Civil Rm #916 Brought into court. Giles, J. - P.Cheng & M. Cunningham, ADA's - M. Roitman, Atty - FTR The following event: Jury Trial scheduled for 08/16/2016 09:00 AM has been resulted as follows: Result: Rescheduled Reason: Request of Defendant		
08/16/2016	Defendant 's Motion to continue trial filed and after hearing, allowed as stated on the record. Rule 36 waived for this period. Giles, J.	49	
08/16/2016	Defendant 's Notice of alibi, filed	50	
08/18/2016	Other Records received from T-Mobile, an Unable to Respond Document stating that they are unable to provide the records due to the target being associated with a prepaid account, T-Mobile does not store or maintain contracts or payment records for prepaid accounts. (Stored on 14th Floor)		
08/18/2016	Other Records received from T-Mobile National Cell Sites, CD. (Stored on 14th Floor)		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
09/16/2016	<p>Event Result: The following event: Jury Trial scheduled for 09/19/2016 09:00 AM has been resulted as follows: Result: Canceled Reason: Transferred to another session</p> <p>By order of the court, this case is transferred to the Third Session for Trial on 9/19/2016. Counsel notified by phone and email.</p>		
09/16/2016	ORDER: 60 jurors requested.	51	
09/19/2016	<p>Event Result: The following event: Jury Trial scheduled for 09/19/2016 09:00 AM has been resulted as follows: Result: Defendant brought into Court. Trial event held before Wilkins J. - C.LaValle, CR</p>		
09/19/2016	Defendant 's Motion to Change into Clothes for Court filed	52	
09/19/2016	Endorsement on Motion to Change into Court clothes, (#52.0): ALLOWED		
09/19/2016	<p>TRIAL ACTIVITY:</p> <p>Hrg re: Motions In Limine held before Wilkins J. (see Generally record for rulings of Court) Commonwealth moves for Trial re: Offense #'s 001-008 and 010-013. Defense answers ready for Trial. The Court Orders a panel of Fourteen (14) Jurors to be selected. Jury Impanelment commences. Jury Impanelment concludes for the day at 1:00PM. The Court allows the Ten (10) selected, unsworn Jurors to Depart and Orders them to return on 9/20/26 at 10:30AM to resume with Impanelment and Trial (Ctrm 808, Jail List) - Wilkins, J. - P.Cheng, ADA - C.LaValle, CR - M.Roitman, Atty</p>		
09/19/2016	Endorsement on Motion for Judicial inquiry into Criminal history records of potential trial Jurors, (#47.0): ALLOWED		
09/20/2016	<p>Event Result: The following event: Jury Trial scheduled for 09/20/2016 09:00 AM has been resulted as follows: Result: Defendant brought into Court. Trial event resumes before Wilkins J. Jury Impanelment continues. - C.LaVallee, CR</p>		
09/20/2016	Commonwealth 's Submission of Proposed Limiting Instruction regarding bad acts of Defendant filed.	53	
09/20/2016	Defendant 's Submission of Stipulation Number 1 filed. (Note: Marked as Trial Exhibit #1 on 9/20/16)	54	
09/20/2016	Defendant 's Submission regarding Stipulation Number 2 filed. (Note: Marked as Trial Exhibit #2 on 9/20/16)	55	
09/20/2016	<p>TRIAL ACTIVITY:</p> <p>Impanelment process resumes. Impanelment Complete. Voir Dire conducted with Defendant (see generally record) ADA P.Cheng and Atty M.Roitman indicate they are satisfied with the Jury. Jury sworn at 11:50AM. Indictments read to the Jury, Pre-charge given. Opening statements made by Commonwealth and Defense. Commonwealth Commences case in chief.</p>		
09/20/2016	Defendant 's Submission regarding First Proposed Jury Instruction filed.	56	
09/20/2016	<p>TRIAL ACTIVITY:</p> <p>Trial suspends for the Day at 4:00PM. Trial to resume 9/21/16 at 9AM (Ctrm 808, Jail List) - Wilkins, J. - P.Cheng, ADA - C.LaValle, CR - M.Roitman, Atty</p>		
09/21/2016	<p>Event Result: The following event: Jury Trial scheduled for 09/21/2016 09:00 AM has been resulted as follows: Result: Defendant brought into Court. Trial event resumes before Wilkins J and a panel of Fourteen (14) Jurors present. - C.LaValle, CR</p>		
09/21/2016	Defendant 's Submission of Second Proposed Jury Instruction filed	57	
09/21/2016	Commonwealth 's Motion to admit prior testimony of unavailable Declarant filed	58	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
09/21/2016	<p>TRIAL ACTIVITY:</p> <p>Trial resumes before Wilkins J. and a Panel of Fourteen (14) Jurors present. Colloquy conducted with the Defendant re: Right to Testify (see generally record)</p> <p>Trial suspends for the day at 1PM. The Court Allows the Jurors to depart and Orders them to return on 9/22/16 at 9AM to resume with the Trial. Wilkins, J. - P.Cheng, ADA - C.LaValle, CR - M.Roitman, Atty</p>		
09/21/2016	Endorsement on Motion to dismiss the Indictment charging violation of a restraining Order, (#33.0): DENIED		
09/22/2016	<p>Event Result:</p> <p>The following event: Jury Trial scheduled for 09/22/2016 09:00 AM has been resulted as follows: Result: Defendant brought into Court. Trial event resumes before Wilkins J. and a panel of Fourteen (14) Jurors present - C.LaValle, CR</p>		
09/22/2016	<p>TRIAL ACTIVITY:</p> <p>Commonwealth rests its case in chief at 9:45AM</p>		
09/22/2016	<p>Defendant 's Motion for requiring finding of not guilty filed. Order: Motion Allowed in part as to Offense #011 as stated on the record and Allowed as to Offense #012 as stated on the Record. - Wilkins J.</p>	59	
09/22/2016	<p>ORDER: After hrg, Defendant's Motion for a required finding of Not Guilty at the Close of the Commonwealth's case ALLOWED IN PART with respect to Offense 011 as stated on the Record and ALLOWED as to Offense 012 as stated on the Record. - Wilkins J. Offense #011 amended upon Allowance of Defendant's Motion for required finding of Not Guilty to read Malicious Destruction of personal Property under \$250 (Misdemeanor Offense per MGL Ch266 s127)</p>		
09/22/2016	<p>Offense Disposition: Charge #9 WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B Date: 06/30/2016 Method: Hearing Code: Dismissed Judge: Krupp, Hon. Peter B</p> <p>Charge #12 THREAT TO COMMIT CRIME c275 §2 Date: 09/22/2016 Method: Jury Trial Code: Not Guilty Finding Judge: Wilkins, Hon. Douglas H</p>		
09/22/2016	<p>Defendant 's Motion for requiring finding of not guilty (renewed Motion at the close of all the evidence) filed Note: Same ruling as stated on the record re: Deft's Motion P#59 for required finding of Not Guilty.</p>	60	
09/22/2016	<p>TRIAL ACTIVITY:</p> <p>Further Colloquy conducted with Defendant re: Right to Testify (see generally record)</p> <p>Defense Rests at 12:30PM</p> <p>Charge conference held.</p> <p>Trial suspends for the day at 1PM. The Court Allows the Jurors to depart and Orders them to return on 9/23/16 at 9AM to resume with the Trial. Wilkins, J. - P.Cheng, ADA - C.LaValle, CR - M.Roitman, Atty</p>		
09/23/2016	<p>Event Result:</p> <p>The following event: Jury Trial scheduled for 09/23/2016 09:00 AM has been resulted as follows: Result: Defendant brought into Court. Trial event resumes before Wilkins J. and a Panel of Fourteen (14) Jurors present - C.LaValle, CR</p>		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
09/23/2016	TRIAL ACTIVITY: Jury Instruction given. Closing arguments made by Defense and Commonwealth. The time having come for the final submission of the case to the Jury and a Panel of Fourteen (14) Jurors present, The Court Orders the Jury reduced to Twelve (12) members. Juror #244 sitting in seat #4 and Juror #27 sitting in seat #9 are each designated alternate Jurors. Jury deliberations begin at 12:03PM, Juror #177 seat #2 designated Foreperson of the Jury. After inspection, Both ADA P.Cheng and M.Roitman indicate they are satisfied with the state of the Exhibits and Verdict slips. Question received from the Jury at 2:15PM. Question and Judge's written response marked "H" for Identification.		
09/23/2016	TRIAL ACTIVITY: Verdict returned by the Jury at 4:04PM.		
09/23/2016	Verdict affirmed, verdict slip filed Verdict returned as to Offense #001 - Not Guilty - Verdict Affirmed, Verdict slip filed.	61	
09/23/2016	Verdict affirmed, verdict slip filed Verdict returned as to Offense #002 - Not Guilty - Verdict Affirmed, Verdict slip filed.	62	
09/23/2016	Verdict affirmed, verdict slip filed Verdict returned as to Offense #003 - Not Guilty - Verdict Affirmed, Verdict slip filed.	63	
09/23/2016	Verdict affirmed, verdict slip filed Verdict returned as to Offense #004 - Not Guilty - Verdict Affirmed, Verdict slip filed.	64	
09/23/2016	Verdict affirmed, verdict slip filed Verdict returned as to Offense #005 - Not Guilty - Verdict Affirmed, Verdict slip filed.	65	
09/23/2016	Verdict affirmed, verdict slip filed Verdict returned as to Offense #006 - Not Guilty - Verdict Affirmed, Verdict slip filed.	66	
09/23/2016	Verdict affirmed, verdict slip filed Verdict returned as to Offense #007 - Guilty - Verdict Affirmed, Verdict slip filed.	67	
09/23/2016	Verdict affirmed, verdict slip filed Verdict returned as to Offense #008 - Not Guilty - Verdict Affirmed, Verdict slip filed.	68	
09/23/2016	Verdict affirmed, verdict slip filed Verdict returned as to Offense #010 - Not Guilty - Verdict Affirmed, Verdict slip filed.	69	
09/23/2016	Verdict affirmed, verdict slip filed Verdict returned as to Offense #011 - Not Guilty - Verdict Affirmed, Verdict slip filed.	70	
09/23/2016	Verdict affirmed, verdict slip filed Verdict returned as to Offense #013 - Not Guilty - Verdict Affirmed, Verdict slip filed.	71	
09/23/2016	Jury Trial . Jury Discharged by Court. Jury List on File pursuant to Commonwealth V Fujita	72	
09/23/2016	TRIAL ACTIVITY: Continued by Order of Court to 9/26/16 at 9AM re Sentence Imposition re: offense #007 (ctrm 808, Jail List) Note: to be heard in ctrm314		
09/23/2016	Defendant oral motion to be released on bail made and DENIED - Wilkins J. Wilkins J. - P.Cheng, CR - C.LaVallee, CR - M.Roitman, Atty		

<u>Docket</u> <u>Date</u>	<u>Docket Text</u>	<u>File</u> <u>Ref</u> <u>Nbr.</u>	<u>Image</u> <u>Avail.</u>
09/23/2016	Event Result: The following event: Jury Trial scheduled for 09/26/2016 09:00 AM has been resulted as follows: Result: Canceled Reason: By Court prior to date		
09/23/2016	Offense Disposition: Charge #1 A&B, VIOL ABUSE PREVENTION ORDER c265 §13A(b) Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H Charge #2 ASSAULT ON FAMILY / HOUSEHOLD MEMBER c265 §13M(a) Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H Charge #3 ASSAULT W/DANGEROUS WEAPON c265 §15B(b) Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H Charge #4 ASSAULT W/DANGEROUS WEAPON c265 §15B(b) Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H Charge #5 A&B c265 §13A(a) Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H Charge #6 STALKING IN VIOL OF RESTRAINING ORDER c265 §43(b) Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H Charge #8 WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H Charge #9 WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B Date: 06/30/2016 Method: Hearing Code: Dismissed Judge: Krupp, Hon. Peter B Charge #10 DESTRUCTION OF PROPERTY +\$250, MALICIOUS c266 §127 Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H Charge #11 DESTRUCTION OF PROPERTY -\$250, MALICIOUS c266 §127 Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H Charge #12 THREAT TO COMMIT CRIME c275 §2 Date: 09/22/2016 Method: Jury Trial Code: Not Guilty Finding Judge: Wilkins, Hon. Douglas H		

<u>Docket</u> <u>Date</u>	<u>Docket Text</u>	<u>File</u> <u>Ref</u> <u>Nbr.</u>	<u>Image</u> <u>Avail.</u>
	Charge #13 THREAT TO COMMIT CRIME c275 §2 Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H		
09/23/2016	Offense Disposition: Charge #1 A&B, VIOL ABUSE PREVENTION ORDER c265 §13A(b) Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H Charge #2 ASSAULT ON FAMILY / HOUSEHOLD MEMBER c265 §13M(a) Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H Charge #3 ASSAULT W/DANGEROUS WEAPON c265 §15B(b) Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H Charge #4 ASSAULT W/DANGEROUS WEAPON c265 §15B(b) Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H Charge #5 A&B c265 §13A(a) Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H Charge #6 STALKING IN VIOL OF RESTRAINING ORDER c265 §43(b) Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H Charge #7 ABUSE PREVENTION ORDER, VIOLATE c209A §7 Date: 09/23/2016 Method: Jury Trial Code: Guilty Verdict Judge: Wilkins, Hon. Douglas H Charge #8 WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H Charge #9 WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B Date: 06/30/2016 Method: Hearing Code: Dismissed Judge: Krupp, Hon. Peter B Charge #10 DESTRUCTION OF PROPERTY +\$250, MALICIOUS c266 §127 Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H Charge #11 DESTRUCTION OF PROPERTY -\$250, MALICIOUS c266 §127 Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Judge: Wilkins, Hon. Douglas H Charge #12 THREAT TO COMMIT CRIME c275 §2 Date: 09/22/2016 Method: Jury Trial Code: Not Guilty Finding Judge: Wilkins, Hon. Douglas H Charge #13 THREAT TO COMMIT CRIME c275 §2 Date: 09/23/2016 Method: Jury Trial Code: Not Guilty Verdict Judge: Wilkins, Hon. Douglas H		
09/23/2016	ORDER: Commonwealth's Motion (P#41) "Ruling as stated in Court" - Wilkins J. Commonwealth's Motion (P#42) "Ruling as stated in Court" - Wilkins J. Commonwealth's Motion (P#45) Allowed - Wilkins J. Commonwealth's Motion (P#46) "Deemed Moot" - Wilkins J.		
09/23/2016	List of exhibits and ID list along with witness list filed in case.		
09/26/2016	The defendant is committed without bail for the following reason: Per Order of the Court.		
09/26/2016	Issued on this date: Mittimus Without Bail Sent On: 09/26/2016 09:50:22	73	
09/26/2016	Defendant Brought into Court. Commonwealth moves for sentencing. After hearing, Court imposes the following: AS to #007 Suffolk County House of Correction. Two and one-half years--14 Months to serve. Balance suspended for two years. (Defendant placed on probation for two years) Conditions of probation--Complete Certified Batters program. Fee imposed while on probation. Victim Witness Fee of \$90.00 imposed while on probation. Probation supervision fee of \$65.00 a month while on probation. Event Result: The following event: Hearing for Sentence Imposition scheduled for 09/26/2016 09:00 AM has been resulted as follows: Result: Held as scheduled		
09/26/2016	Findings and Order of Statutory Fees	74	
09/26/2016	Defendant notified of right of appeal to the Appeals Court within thirty (30) days.		
09/26/2016	ORDER: of Statutory Fees	76	
09/27/2016	Defendant sentenced: Sentence Date: 09/27/2016 Judge: Wilkins, Hon. Douglas H Charge #: 7 ABUSE PREVENTION ORDER, VIOLATE c209A §7 Split Sentence to HOC Term: 2 Years, 6 Months, 0 Days To Serve: 0 Years, 15 Months, 0 Days Served Primary Charge Committed to Suffolk House of Correction (South Bay) Credits 263 Days Probation Probation Type: Risk/Need Probation Duration: 2 Years, 0 Months, 0 Days		
09/27/2016	Issued on this date: Mitt For Sentence (First 6 charges) Sent On: 09/27/2016 09:26:26	75	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
09/30/2016	Notice of appeal filed. Applies To: Velasquez, Steven (Defendant)	77	
09/30/2016	Defendant 's Motion to Withdraw and for Appointment of the Committee for Public Counsel Services as Appellate Counsel filed Applies To: Roitman, Esq., Michael (Attorney) on behalf of Velasquez, Steven (Defendant)	78	
10/17/2016	Dennis Toomey, Esq.'s Notice of Assignment of Counsel		
10/18/2016	The following form was generated: A Clerk's Notice was generated and sent to: Other interested party: Hon. Douglas Wilkins		
10/19/2016	Court Reporter Carol LaVallee is hereby notified to prepare one copy of the transcript of the evidence of 09/19/2016 09:00 AM Jury Trial, 09/20/2016 09:00 AM Jury Trial, 09/21/2016 09:00 AM Jury Trial, 09/22/2016 09:00 AM Jury Trial, 09/23/2016 09:00 AM Jury Trial Original Sent 10/19/16 2nd Notice Sent 4/27/17 3rd notice sent 7/5/2017		
10/19/2016	OTS is hereby notified to provide the JAVS transcript of the proceedings of 06/29/2016 09:30 AM Non-Evidentiary Hearing to Dismiss, 09/26/2016 09:00 AM Hearing for Sentence Imposition. Original Sent 10/19/16 2nd Notice Sent 4/27/17 OTS Alerted Clerks Office that there is no Audio Recorded on FTR for this date *ADA and Atty on Matter Notified via Mail on this date		
10/19/2016	Endorsement on Motion to Withdraw and for Appointment of the Committee for Public Counsel Services as Appellate Counsel, (#78.0): ALLOWED		
10/28/2016	Dennis Toomey, Esq.'s Notice of Appearance	79	Image
11/07/2016	CD of Transcript of 06/29/2016 09:30 AM Non-Evidentiary Hearing to Dismiss received from Rosemary Matchak. 1		
05/31/2017	Deft Not in Court Case Brought Forward today E Curley, MAG N Brophy, PO FTR		
05/31/2017	Probations files Warrant Application ALLOWED	80	
05/31/2017	Issued: Straight Warrant issued on 05/31/2017 for Velasquez, Steven		
05/31/2017	Recalled: (FEE WAIVED) Straight Warrant cancelled on 05/31/2017 for Velasquez, Steven		
05/31/2017	Attorney appearance On this date Dennis Toomey, Esq. dismissed/withdrawn as Appointed - Appellate Action for Defendant Steven Velasquez		
05/31/2017	Attorney appearance On this date Michael Roitman, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Steven Velasquez		
05/31/2017	Attorney appearance On this date Edward Wayland, Esq. added as Appointed - Indigent Defendant for Defendant Steven Velasquez Appointment made for the purpose of Probation Surrender by Judge Edward J Curley.		
05/31/2017	Released on Personal Recognizance,w/o/p, BWR *Same terms and conditions, remain on GPS		
05/31/2017	Probation files Notice of Surrender and hearing(s) for alleged violation(s) of probation	81	Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/31/2017	Event Result: The following event: Hearing for Warrant Removal scheduled for 05/31/2017 02:00 PM has been resulted as follows: Result: Held as Scheduled, Case continued to 7/10/17, hre: Final, J session, By Agreement Appeared: Defendant Velasquez, Steven (Comes into court) Attorney Wayland, E. PO Brophy, N. FTR		
07/10/2017	Def't comes into court Continued by agreement to 8-7-17 re final surrender(J) Sullivan, J. - N. Brophy, PO. - E. Wayland, Atty. - FTR.		
07/17/2017	CD of Transcript of 09/19/2016 09:00 AM Jury Trial, 09/20/2016 09:00 AM Jury Trial, 09/21/2016 09:00 AM Jury Trial, 09/22/2016 09:00 AM Jury Trial, 09/23/2016 09:00 AM Jury Trial received from M.McDonough for C.Lavallee.		
07/20/2017	Issued: Straight Warrant issued on 07/20/2017 for Velasquez, Steven		
07/20/2017	Defendant Not in Court The following event: Hearing on Request for Probation Warrant scheduled for 07/20/2017 09:30 AM has been resulted as follows: Result: Held as Scheduled E.Curley,MAG - N.Brophy,PO - FTR		
07/20/2017	Probations files Warrant Application Filed and ALLOWED WARRANT TO ISSUE Applies To: Wayland, Esq., Edward (Attorney) on behalf of Velasquez, Steven (Defendant); Cheng, Esq., Philip (Attorney) on behalf of Suffolk County District Attorney (Prosecutor)	82	
07/24/2017	Event Result: Def't. brought into court. Jeanne Carol for Def't. for BAIL ONLY Case has next date. Case continued by agreement to 8/7/17 Hrg Re; Final Probation Surrender (J. Session) E. Curley, MAG N. Brophy, PO J. Carol, Atty FTR		
07/24/2017	Recalled: Straight Warrant cancelled on 07/24/2017 for Velasquez, Steven		
07/24/2017	Attorney appearance On this date Jeanne Carol, Esq. added as Appointed - Indigent Defendant for Defendant Steven Velasquez Appointment made for the purpose of Bail Only by Judge Edward J Curley.		
07/24/2017	Released on Personal Recognizance to recognize personally without surety in sum of \$100.00 -Same terms and conditions of probation apply.		
07/24/2017	Bail warnings read		
07/24/2017	Probation files Notice of Surrender and hearing(s) for alleged violation(s) of probation Amended	83	Image
07/24/2017	Probation 's Request for issuance of a summons I, filed.	84	
07/24/2017	Endorsement on Request for issuance of a summons I, endorsed as follows, (#84.0): ALLOWED		Image
07/24/2017	Attorney appearance On this date Jeanne Carol, Esq. added as Appointed - Indigent Defendant for Defendant Steven Velasquez		
08/02/2017	Appeal: notice of assembly of record sent to Counsel		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/02/2017	Appeal: Statement of the Case on Appeal (Cover Sheet).		
08/07/2017	Comes into court. Final surrender hearing held Sayeed notice read		
08/07/2017	Probations files Amended 7 day notice of surrender	85	
08/07/2017	Defendant, being represented by counsel, admits to violation of conditions, found in violation of conditions of probation after hearing, probation continued in force to thie original date of 2-18-19. Same terms and conditions Added COP: 1. Certified Batterer's Program by 1-31-18 C/S alternative imposed		
08/07/2017	Findings and Order of Statutory Fees PSF arrearage vacated - \$780 vacated Sullivan, J. - N. Brophy, PO. - E. Wayland, Atty. - FTR	86	Image
08/17/2017	Request filed by probation for a warrant. And after hearing, Allowed. VTP straight warrant issued	87	
08/17/2017	Issued: Straight Warrant issued on 08/17/2017 for Velasquez, Steven		
08/18/2017	Recalled: Straight Warrant cancelled on 08/18/2017 for Velasquez, Steven		
08/18/2017	The defendant/petitioner is committed without bail for the following reason: Per Order of the Court. Without Prejudice. *Defendant requests to stay at Nashua Street Jail Mittimus Issued.		
08/18/2017	Attorney appearance On this date Jeanne Carol, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Steven Velasquez		
08/18/2017	Attorney appearance On this date Edward Wayland, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Steven Velasquez		
08/18/2017	Attorney appearance On this date Dennis Toomey, Esq. dismissed/withdrawn as Appointed - Appellate Action for Defendant Steven Velasquez		
08/18/2017	Attorney appearance On this date Leonard Eugene Milligan, III, Esq. added as Appointed - Indigent Defendant for Defendant Steven Velasquez Appointment made for the purpose of Probation Surrender by Judge Lisa B Medeiros.		
08/18/2017	Event Result: Deft brought into Court. Surrendered by PO this day Continued to 9-20-17 for hearing Re: Probation report int Rm 705 The following event: Hearing for Warrant Removal scheduled for 08/18/2017 09:30 AM has been resulted as follows: Result: Held as Scheduled Appeared: Defendant Velasquez, Steven Attorney Milligan, III, Esq., Leonard Eugene Medeiros, MAG - N. Brophy, PO - FTR		
08/18/2017	Probation files Notice of Surrender and hearing(s) for alleged violation(s) of probation Applies To: Velasquez, Steven (Defendant); Zanini, Esq., John P (Attorney) on behalf of Suffolk County District Attorney (Prosecutor); Milligan, III, Esq., Leonard Eugene (Attorney) on behalf of Velasquez, Steven (Defendant); Cheng, Esq., Philip (Attorney) on behalf of Suffolk County District Attorney (Prosecutor)	88	
09/20/2017	Event Result: Deft not in Court. Continued to 10-5-17 for hearing Re: Final Surrender in Rm 704 The following event: Hearing for Probation Report scheduled for 09/20/2017 09:30 AM has been resulted as follows: Result: Held as Scheduled Appeared: Attorney Milligan, III, Esq., Leonard Eugene Curley, MAG - N. Brophy, PO - FTR		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
09/20/2017	Agreed upon final surrender report filed. Applies To: Zanini, Esq., John P (Attorney) on behalf of Suffolk County District Attorney (Prosecutor); Milligan, III, Esq., Leonard Eugene (Attorney) on behalf of Velasquez, Steven (Defendant); Cheng, Esq., Philip (Attorney) on behalf of Suffolk County District Attorney (Prosecutor)	89	
10/05/2017	Brought into court. Final surrender hearing held Sayeed notice read Judge: Miller, Hon. Rosalind H		
10/05/2017	Defendant, being represented by counsel, found in violation of conditions of probation after hearing, probation continued in force to the original date of 2-18-19. Same terms and conditions Added COP 1. Comply with DCF treatment plan 2. Continue with batterers program GPS order vacated Findings on violation filed Miller, J. - N. Brophy, PO. - L. Milligan, Atty. - FTR Judge: Miller, Hon. Rosalind H	90	Image
12/06/2017	OTS is hereby notified to provide the JAVS transcript of the proceedings of 09/26/2016 09:00 AM Hearing for Sentence Imposition. FTR **(Held in courtroom 314)**		
12/18/2017	Issued: Straight Warrant issued on 12/18/2017 for Velasquez, Steven		
12/18/2017	Request filed by probation for a warrant. And after hearing, Allowed. VTP straight warrant issued	91	
12/27/2017	Warrant returned to court: UNSERVED		
01/02/2018	Pro Se Defendant 's Motion for Speedy Trial	92	
01/02/2018	Event Result: Deft not in Court Continued to 1-26-18 for Default removal in Rm 705 Judge: Curley, Edward J The following event: Conference to Review Status scheduled for 01/02/2018 09:30 AM has been resulted as follows: Result: Held as Scheduled Curley, MAG - FTR Judge: Curley, Edward J		
01/03/2018	Defendant 's Notice of change of address of appellate counsel. Filed.	93	Image
01/09/2018	Deft Not in Court Continued by Order of the Court to 1/18/18 for Hearing re: Initial in CM Session, JAIL LIST L Medeiros, MAG S Bolanos, PO FTR Judge: Medeiros, Lisa B		
01/11/2018	Notice of docket entry received from Appeals Court Notice of order to supply additions transcripts and stay proceedings, ORDER: Appellate proceedings are stayed pending preparation of the transcript of the proceeding, trial sentencing hearing which took place on 09/26/2016. If, within three months of this order, a transcript has not been filed in the trial court, provided to the parties, and transmitted to the Appeals Court, the requesting party is to file a status report with the Appeals Court that explains the delay and offers an estimated completion date of the transcript. Furthermore, the requesting party shall file a status report with the Appeals Court within seven days of the filing of the transcript.	94	Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
01/18/2018	Bail set at \$75,000.00 Surety, \$7,500.00 Cash. Without Prejudice Conditions of bail: 1. Stay away, no contact, direct or indirect with alleged victim Stephanie Matos pursuant to ANY court orders and court appearances. 2. Stay away, no contact, direct or indirect with co-deft Mr. Brown Judge: Medeiros, Lisa B		
01/18/2018	Event Result: Judge: Medeiros, Lisa B The following event: Hearing for Warrant Removal scheduled for 01/26/2018 09:30 AM has been resulted as follows: Result: Canceled Reason: By Court prior to date Judge: Medeiros, Lisa B		
01/18/2018	Bail warnings read		
01/18/2018	Issued on this date: Mittimus in Lieu of Bail Sent On: 01/18/2018 12:25:21	95	
01/18/2018	Recalled: Straight Warrant cancelled on 01/18/2018 for Velasquez, Steven		
01/18/2018	Event Result: Defendant brought into court, warrant ordered recalled. - Surrendered by PO this day Continued by agreement to 3/6/2018 hearing re: probation report (magistrate session) L. Medeiros MAG S. Bolanos P.O J. Hayes Atty FTR Judge: Medeiros, Lisa B Judge: Medeiros, Lisa B		
01/18/2018	Attorney appearance On this date John C Hayes, Esq. added as Appointed - Indigent Defendant for Defendant Steven Velasquez Appointment made for the purpose of Probation Surrender by Judge Lisa B Medeiros.		
01/18/2018	Probation files Notice of Surrender and hearing(s) for alleged violation(s) of probation	96	Image
01/18/2018	ORDER: findings regarding bail. Filed. Judge: Medeiros, Lisa B	97	Image
01/23/2018	John C Hayes, Esq.'s Notice of appearance, filed.	98	Image
02/26/2018	General correspondence regarding Notice regarding transcripts ordered sent to D. Toomey Atty.		
03/06/2018	Probations files Request for Summons I	99	
03/06/2018	Endorsement on Probation's request for Summons I, (#99.0): ALLOWED Judge: Figueroa, Rebeca Gomez		Image
03/06/2018	Agreed upon final surrender report filed.	100	Image
03/06/2018	Defendant not in Court, - Continued by agreement to 3/12/18, Hearing RE: Video Bail (2pm, Criminal Session 1, CtRm 704) *Jail list* - Continued by agreement to 4/6/18, Hearing RE: Final Surrender (Criminal Session 1, CtRm 704) *Jail list* S. Bolanos, P.O - J. Hayes, Atty - FTR Judge: Figueroa, Rebeca Gomez		
03/06/2018	General correspondence regarding Summons Issued for witness to appear before the Court on April 6, 2018		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/12/2018	The defendant\petitioner is committed without bail for the following reason: Per Order of the Court. Judge: Tochka, Hon. Robert N		
03/12/2018	Deft on video at Nashua St Jail Oral motion for reduction of bail is made and denied Court revokes prior order of bail and orders deft held on a mitt without bail Case has next date S Bolanos, PO. - J Hayes, Atty. - FTR Judge: Tochka, Hon. Robert N		
04/06/2018	Deft not in court Continued by agreement to 4-12-18 re final surrender hearing(J) S Bolanos, PO. - J Hayes, Atty. - FTR. Judge: Cannone, Hon. Beverly J		
04/12/2018	Event Result: Judge: Cannone, Hon. Beverly J The following event: Final Probation Surrender Hearing scheduled for 04/12/2018 09:30 AM has been resulted as follows: Result: Not Held Reason: Transferred to another session		
04/12/2018	Event Result: Defendant brought into court, Continued by agreement to 5/10/2018 hearing re: probation status (magistrate session) *defendant excused Continued by agreement to 6/19/2018 hearing re: motion to suppress (ctrm 713 at 10:00am) * jail list E. Curley MAG J. Hayes Atty S. Bolanos PO FTR Judge: Curley, Edward J		
04/20/2018	Appeal: FTR DVD/CD Received from OTS, re: 9/26/16 (Copy sent to Atty J.Visone and ADA J.Zanani) (Original taken to the Appeals court)		
05/10/2018	Deft Not in Court - Presence Waived Continued by agreement to 5/30/18 for Hearing re: Probation Status in 1st E Curley, MAG J Chalmers for S Bolanos, PO J Hayes, ATTY FTR Judge: Curley, Edward J		
05/10/2018	Probation files Notice of Surrender and hearing(s) for alleged violation(s) of probation	101	Image
05/30/2018	Deft brought into court Continued by agreement to 7-24-18 re motion to suppress(713) S Bolanos, PO. - J Hayes, Atty. - FTR Judge: Cannone, Hon. Beverly J		
07/24/2018	Event Result: Evidentiary Hearing on Suppression scheduled on: 07/24/2018 09:00 AM Has been: Not Held For the following reason: Joint request of parties Hon. Michael D Ricciuti, Presiding Appeared: Staff: Rourke Donnelly, Assistant Clerk Magistrate		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/06/2018	Event Result: Conference to Review Status scheduled on: 08/06/2018 02:00 PM Has been: Held as Scheduled Hon. Beverly J Cannone, Presiding Appeared: Staff: Anne Kaczmarek, Assistant Clerk Magistrate		
09/26/2018	Event Result: Final Probation Surrender Hearing scheduled on: 09/26/2018 09:30 AM Has been: Not Held For the following reason: Joint request of parties Hon. Michael D Ricciuti, Presiding Appeared: Staff: Rourke Donnelly, Assistant Clerk Magistrate		
11/14/2018	Event Result: Violation of Probation Hearing scheduled on: 11/14/2018 02:00 PM Has been: Not Held For the following reason: Joint request of parties Deft not in court Continued by agr for probation status on 12/5/18 2 pm courtroom 817 Hon. Robert L Ullmann, Presiding - J Haggerty PO - J Garland, Atty - FTR J Russo Appeared: Staff: Anne Kaczmarek, Assistant Clerk Magistrate Judge: Ullmann, Hon. Robert L		
12/05/2018	Attorney appearance On this date John C Hayes, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Steven Velasquez		
12/05/2018	Attorney appearance On this date Leonard Eugene Milligan, III, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Steven Velasquez		
12/05/2018	Attorney appearance On this date Dennis Toomey, Esq. dismissed/withdrawn as Appointed - Appellate Action for Defendant Steven Velasquez		
12/05/2018	Attorney appearance On this date Jeffrey Garland, Esq. added as Appointed - Indigent Defendant for Defendant Steven Velasquez Appointment made for the purpose of Probation Surrender by Judge Hon. Robert L Ullmann.		
12/05/2018	Event Result: Deft brought into Court. Continued to 3-6-19 for Probation Status in Rm 817 at 2pm Probation Administrative Conference scheduled on: 12/05/2018 02:00 PM Has been: Held as Scheduled Hon. Robert L Ullmann, Presiding Appeared: FTR - M. Tohme, ADA Defendant Steven Velasquez Jeffrey Garland, Esq., Appointed - Indigent Defendant Staff: Lisa Mederios, Assistant Clerk Magistrate Judge: Ullmann, Hon. Robert L		
01/04/2019	Defendant 's Motion to withdraw	102	Image

<u>Docket</u> <u>Date</u>	<u>Docket Text</u>	<u>File</u> <u>Ref</u> <u>Nbr.</u>	<u>Image</u> <u>Avail.</u>
01/07/2019	<p>Defendant brought into Court.</p> <p>Event held before Locke, J.</p> <p>Court conducts colloquy with Defendant at sidebar re: Request for New Counsel. (Sealed on FTR by Order of the Court).</p> <p>Court appoints Attorney Michael Roitman to represent the Defendant pursuant to Rule 53.</p> <p>Continued by Agreement for Hearing Re: Status to 1/28/18 at 2:00PM in Courtroom 817. - Jail List</p> <p>Hon. Jeffrey A Locke, Presiding Appeared: M.L. Szulborski, ADA for M. Tohme, ADA - J. Haggarty, P.O. - J. Garland, Atty. - M. Roitman, Atty. - FTR Staff: Rebeca Figueroa, Assistant Clerk Magistrate Michelle Pierce, Assistant Clerk</p>		
01/07/2019	<p>Endorsement on Motion to Withdraw, (#102.0): ALLOWED After hearing, ALLOWED. Locke, J.</p> <p>Judge: Locke, Hon. Jeffrey A</p>		
01/07/2019	<p>Attorney appearance On this date Jeffrey Garland, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Steven Velasquez</p>		
01/07/2019	<p>Attorney appearance On this date Michael Roitman, Esq. added as Appointed - Indigent Defendant for Defendant Steven Velasquez</p>		
01/28/2019	<p>Defendant brought into Court.</p> <p>Hearing Re: Status held before Locke, J.</p> <p>Continued by Agreement to 2/8/19 for Final Surrender Hearing at 9:30AM in Courtroom 704. - JAIL LIST</p> <p>Cancel 3/6/19 Hearing Re: Status in Courtroom 817.</p> <p>Hon. Jeffrey A Locke, Presiding Appeared: J. Haggerty, P.O. - M. Roitman, Atty. - FTR Staff: Rebeca Figueroa, Assistant Clerk Magistrate Michelle Pierce, Assistant Clerk</p>		
01/28/2019	<p>Event Result: Conference to Review Status scheduled on: 03/06/2019 02:00 PM Has been: Canceled For the following reason: By Court prior to date Hon. Jeffrey A Locke, Presiding Appeared: Staff: Rebeca Figueroa, Assistant Clerk Magistrate Michelle Pierce, Assistant Clerk</p>		
01/28/2019	<p>Probations files</p> <p>Request for Summons I</p>	103	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/08/2019	Findings and Order of Statutory Fees \$780 Probation Supervision Fee VACATED \$90 Victim Witness Fee VACATED \$750 Legal Counsel Fee VACATED \$50 Default Warrant Recall Fee VACATED \$110 DNA Fee VACATED (Filed) Judge: Tochka, Hon. Robert N Applies To: Roitman, Esq., Michael (Attorney) on behalf of Velasquez, Steven (Defendant); Zanini, Esq., John P (Attorney) on behalf of Suffolk County District Attorney (Prosecutor); Cheng, Esq., Philip (Attorney) on behalf of Suffolk County District Attorney (Prosecutor)	104	Image
02/08/2019	List of exhibits and witness list (Filed)	105	Image
02/08/2019	Defendant brought into court Final Probation Surrender Hearing, held as to count #007 Sayeed notice read. After stipulation, Court finds defendant in violation of Probation on offense #007 As to count #007 Court Orders Defendant to serve the balance of sentence imposed on 09/26/2016 (2 years and 6 months at Suffolk County House of Correction at South Bay, 15 months to be served, balance suspended probation for 2 years) DEEMED SERVED Recognizance sent to Chelsea District Court by 2/11/2019 and Peabody District Court 2/12/2019 R. Tochka, J M. Tohme, ADA M. Roitman, Atty J. Haggerty, PO FTR 10:38am		
02/12/2019	Notice of appeal filed by defendant regarding the opinions, rulings, directions, verdict and judgment of the Court as to the defendant's violation of his probation	106	Image
02/15/2019	OTS is hereby notified to provide the JAVS transcript of the proceedings of 02/08/2019 09:30 AM Final Probation Surrender Hearing.		
02/15/2019	Michael Roitman, Esq.'s Motion to Withdraw and for Appointment of the Committee for Public Counsel Services as Appellate Counsel Filed (Notice, copy and docket to Tochka, J.) - Sent	107	Image
03/19/2019	Appeal: FTR DVD/CD Received from OTS; re: 2/8/2019		
03/21/2019	Endorsement on Motion to Withdraw and for Appointment of the Committee for Public Counsel Services as Appellate Counsel, (#107.0): ALLOWED (Notice and copy to Atty M.Roitman) - Sent (E-mailed to D.Mele, CPCS)		Image
03/21/2019	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Michael Roitman, Esq.		
03/21/2019	Attorney appearance On this date Michael Roitman, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Steven Velasquez		
04/05/2019	Other 's Notice of Assignment of Counsel from CPCS (Filed)		Image
04/05/2019	Notice sent to attorneys ADA J.Zanini and Atty P.Stewart with transcript via e-mail		

Case Disposition

Disposition	Date	Case Judge
Disposed by Jury Verdict	09/23/2016	Wilkins, Hon. Douglas H

<u>Docket</u> <u>Date</u>	<i>Docket Text</i>	<u>File</u> <u>Ref</u> <u>Nbr.</u>	<i>Image</i> <i>Avail.</i>
04/23/2019	Appeal: Statement of the Case on Appeal (Cover Sheet).	109	Image

Commonwealth v. Sheppard

Commonwealth v. Sheppard, Not Reported in N.E.3d (2017)
34 Mass.L.Rptr. 294

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Commonwealth v. Sheppard, Not Reported in N.E.3d (2017)
34 Mass.L.Rptr. 294

34 Mass.L.Rptr. 294
Superior Court of Massachusetts,
Suffolk County.

COMMONWEALTH of Massachusetts
v.
Jahmil SHEPPARD

SUCR2016900
|
June 29, 2017

Opinion

[Paul D. Wilson](#), Justice of the Superior Court

*1 Boston police officers pulled over Defendant Jahmil Sheppard's car for an alleged motor vehicle infraction. Before the encounter was over, the police had discovered a firearm in the car, and so they charged Mr. Sheppard with firearms-related offenses. Mr. Sheppard now moves to suppress the weapon.

Mr. Sheppard was on probation at the time he was charged with these new crimes. As a result, Mr. Sheppard now faces possible revocation of his probation for violating its terms by committing another crime. Therefore Mr. Sheppard has filed a second motion, arguing that any evidence that I rule inadmissible at trial in today's case must also be excluded from evidence at the hearing concerning the revocation of his probation in the earlier case.

I held a hearing on both motions on June 19, 2017. The only witness was Officer Taylor Small of the Youth Violence Task Force of the Boston Police Department. Five exhibits were introduced, including video taken by Officer Small's body camera, which was also played during the hearing. Counsel argued the motions both before and after the presentation of the evidence.

I will now allow the motion to suppress, as well as the motion to exclude the suppressed evidence at the probation revocation hearing.

FINDINGS OF FACT

Based on all the credible evidence and the reasonable inferences from that evidence, I find the following facts.

1. The Stop

On September 28, 2016, at approximately 9:25 P.M., Officer Small was on routine patrol in an unmarked cruiser with two partners. As is their habit when on patrol, the officers used their in-cruiser computer to query law enforcement databases about the registered owners of motor vehicles they encountered. Their purpose was to check for stolen vehicles, expired registrations, revoked insurance coverage, and the like.

On this night, their cruiser fell in behind a motor vehicle operated by Mr. Sheppard. The officers submitted a query about the auto's registration, and learned that Mr. Sheppard was the registered owner of the car. Officer Small and at least one of his partners immediately recognized the name, because they had arrested Mr. Sheppard in May 2013 for carrying an unlicensed firearm in his motor vehicle. These officers were aware that Mr. Sheppard had been convicted of a firearms violation at that time, and had one additional firearms-related conviction on his record. They were also aware that Mr. Sheppard was on probation as a result of his conviction for the firearms crime for which they had arrested him three years earlier. The officers submitted further queries, confirming that Mr. Sheppard's motor vehicle was inspected and insured and that he had a valid driver's license.

As the officers followed Mr. Sheppard down a one-way street, containing one traffic lane and parking on both sides, Mr. Sheppard pulled quickly into a parking space on the left side of the street. He did not signal before making that maneuver. The officers decided that Mr. Sheppard had acted in a way that was unsafe for following vehicles. (However, Officer Small, who was driving the vehicle closest to Mr. Sheppard's car on this one-lane street, did not testify that he was forced to take any action as a result of Mr. Sheppard pulling his car to the curb.) The officers decided to cite Mr. Sheppard civilly for failure to use a turn signal. Later in the encounter, one of the officers did write a ticket for that civil offense, which is Exhibit 1.

*2 Officer Small activated his cruiser's blue lights and brought his cruiser to a stop. All three officers got out of the cruiser and approached Mr. Sheppard's now-parked vehicle. Mr. Sheppard was the only occupant of the car.

2. The Officers' Dealings with Mr. Sheppard About the Civil Infraction

Officer Small approached the driver's door, where he observed that Mr. Sheppard was sweating and nervous. Officer Small asked Mr. Sheppard for his driver's license and registration. Mr. Sheppard had difficulty removing the registration from a plastic envelope, asking Officer Small to assist, which Officer Small declined to do. Eventually Mr. Sheppard extracted the registration.

Because of the earlier queries, the officers knew that both the registration and the driver's license were current. Nevertheless, Officer Small returned to the cruiser to run a confirmatory check on the license and registration, and to run certain other queries that he had not run before. Among those queries was a request for Mr. Sheppard's Board of Probation criminal record ("BOP"). See Exhibit 5, a Department of Criminal Justice Information Services showing the date and time of various queries. A review of that BOP confirmed that Mr. Sheppard was on probation, a fact that Officer Small already knew. During the few minutes that this process took, one of Officer Small's partners remained with Mr. Sheppard and his motor vehicle, engaging in conversation.

The Prolongation of the Stop

Officer Small returned shortly to the driver's window of Mr. Sheppard's car. He asked Mr. Sheppard how his probation was going, and specifically whether the probationary terms included any areas from which he was to stay away, or any curfew. Mr. Sheppard answered these questions cooperatively, but was still sweating.

Officer Small asked Mr. Sheppard if there were any weapons in his car. Mr. Sheppard responded, "No, why would there be?" Officer Small reminded Mr. Sheppard that he personally had arrested Mr. Sheppard three years earlier for having a weapon in a motor vehicle. Officer Small asked if Mr. Sheppard had any weapons on him, and he said no. Officer Small asked if Mr. Sheppard would mind if he checked, and Mr. Sheppard replied that he wanted to go home.

One of the other officers asked Mr. Sheppard why he was parking where he parked. He gave two different answers: that there is no parking available near his house, so sometimes he parked here and took an Uber home; and that he was visiting a nearby friend. Officer Small believed these two answers to be inconsistent, and also believed that Mr. Sheppard was getting more nervous, as indicated by the fact that his legs were now shaking.

4. The Exit Order

Approximately seven minutes after encounter began, one of Officer Small's partners ordered Mr. Sheppard out of his car. Officer Small believed that his partner was right to do so, because of a host of factors.

One factor was environmental. The officers knew the neighborhood to be a high crime area. In fact, someone had shot at Officer Small in a nearby public park three years earlier.

Another factor had to do with their prior arrest of Mr. Sheppard. On that occasion, as on this evening, Mr. Sheppard was crossing rival gang territory. On that occasion, he had an unlicensed gun with him, and the officers thought he might be repeating that pattern.

*3 Other factors were more specific to Mr. Sheppard's role in a Boston street gang feud. The officers knew that Mr. Sheppard was a member of the Castlegate street gang. They had just stopped him, as they had when they arrested him three years earlier, in territory controlled by the H Block street gang, which was feuding (apparently perennially) with the Castlegate street gang. On the occasion of their prior arrest of Mr. Sheppard, Officer Small had overheard Mr. Sheppard telling someone on the telephone that he had been carrying an illegal firearm then because of his "trouble" with "some people," which Officer Small reasonably interpreted as suggesting that Mr. Sheppard felt compelled to carry a gun for self-defense in H Block territory.

Finally, some factors justifying the exit order arose from what the officers had observed in the few minutes they had been with Mr. Sheppard. He was nervous from the outset of the encounter, and became more nervous when Officer Small asked him if there was a gun in his car. He gave answers that they regarded as abnormal and inconsistent when asked why he had parked where he had parked.

In response to the exit order, Mr. Sheppard refused to get out of the driver's seat. Mr. Sheppard insisted that he did not have to get out of the car, and inquired about why he had been stopped. The officers renewed the exit order more than once, and more than once Mr. Sheppard ignored it. Finally one officer reached in from the passenger side and unbuckled Mr. Sheppard's seatbelt, and another officer guided him out the driver's door. Officer Small ordered Mr. Sheppard to sit on a ledge abutting the sidewalk.

5. The Search

Officer Small asked if Mr. Sheppard had anything that might hurt the officers. Mr. Sheppard refused to answer, looking down toward the ground. This concerned Officer Small even more, so he put handcuffs on Mr. Sheppard. Officer Small told Mr. Sheppard that he was not under arrest, but that the officer was concerned about his behavior.

While Officer Small was handcuffing Mr. Sheppard, one of his partners frisked the motor vehicle. That officer found a firearm under the floor mat on the passenger's side of the front seat.

With that discovery, the officers decided to arrest and search Mr. Sheppard. They read him his *Miranda* rights, which Mr. Sheppard acknowledged. Officer Small asked him more than once to produce his license for the firearm they had discovered. Mr. Sheppard did not answer this question. This was no surprise to the officers, who knew that Mr. Sheppard could not obtain a firearm license because of his past firearm convictions.

1. Suppression of the Fruits of the Stop

In his suppression motion, Mr. Sheppard argues that the officers violated his constitutional rights in four ways. First, they used the pretext of a phantom civil infraction to stop him. Second, they then unlawfully prolonged the stop, inquiring about his probationary status and asking him about weapons, until they could find evidence of a crime. Third, they had no basis for the exit order. Fourth, they lacked probable cause to search the vehicle.

I need consider only the second argument to decide this motion. Even assuming (without deciding) that the stop itself did not violate Mr. Sheppard's constitutional rights, I conclude that the officers prolonged the stop beyond constitutional limits. Had they simply issued the traffic citation and let Mr. Sheppard go on his way, there would have been no cause for an exit order or a search of the vehicle. Because the stop lasted too long, I will suppress the evidence found in the search.

The facts of today's case bear a striking resemblance to those of [Commonwealth v. Cordero, 477 Mass. 237 \(2017\)](#), decided by the Supreme Judicial Court earlier this month. For that reason, I will recite in some detail the facts of that case, which make it such an apt model for the decision here.

*4 In *Cordero*, a state trooper on routine patrol on Route 20 in Berkshire County observed a civil infraction, namely a vehicle with broken tail and brake lights and illegal window tint. While he followed the car, the trooper used his onboard computer to discover that Mr. Cordero was the registered owner, had a current valid driver's license, and that the vehicle was properly registered, inspected and insured. [Id. at 238](#). The trooper also learned that Mr. Cordero lived in Holyoke, a city known for its narcotics activity—just as Mr. Sheppard lived (and was stopped) in a high crime area known for its gang violence and firearms violations. The trooper also determined that there were no warrants out for Mr. Cordero's arrest, and no pending criminal charges. The trooper checked Mr. Cordero's criminal record, which showed past firearm violations, drug offenses, and assault and battery on a police officer.

The trooper signaled Mr. Cordero to stop, and he did so. When the trooper asked for his driver's license and registration, Mr. Cordero seemed extremely nervous, and could not produce the vehicle's registration. When asked where he was going and coming from, Mr. Cordero gave answers that the trooper did not believe, some of which were inconsistent. *Id.* at 239. Mr. Cordero asked if he could get out of his vehicle to look at broken tail light, and the trooper permitted this. *Id.* at 240. Mr. Cordero's voluntary exit from his car turned out to be the functional equivalent of an exit order, because the trooper apparently never allowed Mr. Cordero back into his car, even though the night was cold.

Just as in today's case, the trooper asked Mr. Cordero for permission to search his car, and Mr. Cordero declined. By then another trooper, summoned as backup, arrived at the scene. In a departure from the facts of today's case, the troopers did not immediately search the vehicle; instead they called for a K-9 unit to sniff the car.

Meanwhile, Mr. Cordero was so cold that he asked if he could sit in the back seat of one of the cruisers. One of the troopers told him that he could, but only after he submitted to a pat frisk and cuffs. Mr. Cordero consented. The frisk revealed \$1,900 in a pocket. When Mr. Cordero was again asked for consent to a search of the car, he said—just like Mr. Sheppard here—that he only wanted to go home. A third or fourth request for consent finally yielded permission, after which the troopers discovered contraband in the car. *Id.*

The stop in *Cordero* was much longer than in today's case, lasting between 40 and 45 minutes. The Commonwealth points out that Officer Small's partners detained Mr. Sheppard for only seven minutes from the beginning of the encounter to the exit order (and then, of course, at least a few minutes longer while Mr. Sheppard was sitting on the ledge, and then being cuffed while the officers were finding the firearm in the motor vehicle). But whether a stop has been unconstitutionally prolonged is not measured simply by how many minutes the encounter takes. The test, *Cordero* teaches, depends on the purpose of the stop: "A routine traffic stop may not last longer than 'reasonably necessary to effectuate the purpose of the stop.'" *Id.* at 241, quoting [Commonwealth v. Amado, 474 Mass. 147, 151 \(2016\)](#). Generally the interaction is brief, lasting just long enough for the officers to obtain the operator's license and registration, verify the information they contain, prepare the citation, and explain it to the driver. "Citizens do not expect that police officers handling a routine traffic violation will engage ... in stalling tactics, obfuscation, strained conversation, or unjustified exit orders, to prolong the seizure in the hope that, sooner or later, the stop might yield up some evidence of an arrestable crime." [Commonwealth v. Gonsalves, 429 Mass. 658, 663 \(1999\)](#).

The *Cordero* court ruled that the trooper was authorized to stop the vehicle for the civil traffic infractions, and then to conduct a roadside investigation related to the broken lights and the impermissible window tint. The trooper already knew the identity of the registered owner of the vehicle, but he was entitled to confirm the identity of the driver. But the stop could not last longer than reasonably necessary to undertake those tasks, and to write the citation. [Cordero, 477 Mass. at 243](#).

*5 There is no doubt that the officers unduly prolonged the stop here. Once the officers had confirmed (twice, both before and after stopping him) that Mr. Sheppard was a licensed driver and that his car was properly registered, inspected and insured, and they had found no outstanding warrants, they did not simply write a ticket for the civil infraction. Instead of doing that and sending him on his way, Officer Small inquired into the terms of his probation. Then he asked him if there might be a weapon in the car. Then, based on what they took to be unsatisfactory answers to questions they had no right to ask, the officers pulled Mr. Sheppard out of the car and searched it.

The Commonwealth argues that the officers had a reasonable suspicion of illegal activity that justified prolonging the stop. The Commonwealth argued the same thing in *Cordero*, pointing to the extreme nervousness of Mr. Cordero; his evasiveness in answering questions; that he was coming from a high crime area, the city of Holyoke; and that he had prior convictions for drug and weapons crimes. The *Cordero* court ruled that these factors, even added together, did not support reasonable suspicion of criminal activity that would permit the troopers to prolong the stop to investigate further. *Id.* at 247.

In today's case, the Commonwealth argues the same four factors. But the Commonwealth suggests that Officer Small and his partners had additional information on which to base reasonable suspicion that Mr. Sheppard might have a gun in his vehicle. For one thing, Officer Small himself had arrested this Mr. Sheppard for secreting an unlicensed gun in his car three years earlier under similar circumstances. I am sympathetic to Officer Small's belief that history sometimes repeats itself on the streets of Boston. But in *Cordero* the trooper knew that Mr. Cordero's criminal record included previous drug offenses, just as Officer Small and his partners knew that Mr. Sheppard had committed previous gun offenses. The serendipitous fact that Officer Small and his partners had been the arresting officers as to a past offense does not provide a principled distinction between the two cases. If much weight were given to the fact that there were convictions on a driver's criminal record, convicted criminals would never be free of the specter of exit orders and searches when they were stopped for offenses such as, in this case, failure to use a turn signal.

The Commonwealth also distinguishes this case from *Cordero* by pointing out that the trooper stopped Mr. Cordero on a state highway in the City of Pittsfield¹ in western Massachusetts, while Officer Small and his partners stopped Mr. Sheppard on the turf of a rival gang in a high crime area of Boston, and not far from a park where someone had taken a shot at Officer Small three years earlier. However, echoing several other recent Supreme Judicial Court decisions, the *Cordero* court reiterated, "We repeatedly have urged caution in the use of this consideration, pointing out that 'many honest, law-abiding citizens live and work in high-crime areas. Those citizens are entitled to the protections of the Federal and State Constitutions, despite the character of the area.'" *Id.* at 245, quoting [Commonwealth v. Gomes, 453 Mass. 506, 512 \(2009\)](#).

*6 Applying the law so recently set out in *Cordero* to the similar facts of this case, I rule that the officers violated Mr. Sheppard's constitutional rights when they unduly prolonged a stop for a civil infraction beyond the time necessary to issue a citation. Therefore the search that followed the stop was also unconstitutional, and all fruits of the search, as well as any statements made by Mr. Sheppard, must be suppressed.

2. Application of the Exclusionary Rule to the Probation Revocation Hearing

Having decided that the fruits of the search may not be used at trial in today's case, I turn to the question of whether they must also be excluded from evidence at Mr. Sheppard's probation revocation hearing. It is undisputed that the officers who stopped and searched Mr. Sheppard knew that Mr. Sheppard was on probation. Because of this fact, Mr. Sheppard argues, the evidence found during the unconstitutional search may not be admitted at Mr. Sheppard's probation revocation hearing. I agree.

This is a matter of first impression in Massachusetts. However, the stage was set for today's decision in [Commonwealth v. Olsen, 405 Mass. 491, 491 \(1989\)](#). There the Supreme Judicial Court ruled that unconstitutionally obtained evidence was nonetheless admissible at a probation revocation proceeding—but only because "the police who unlawfully obtained the evidence neither knew nor had reason to know of the probationary status of the person whose property was seized." [Id. at 491](#). The *Olsen* court "expressly [left] open the question whether the police officer's knowledge of the probationer's status would compel a different result." [Id. at 496](#).

In today's case, I must answer that open question. I now hold that illegally obtained evidence should be excluded in a probation revocation hearing where the police officers who conducted the unconstitutional search knew or had reason to know that the person whose property was searched was a probationer.

Two predominant rationales underlie the suppression of evidence under the exclusionary rule: 1) deterrence of unlawful searches and seizures by the police; and 2) preservation of judicial integrity by "disassociating the courts from unlawful [police] conduct." [Commonwealth v. Long, 476 Mass. 526, 535-36 \(2017\)](#). My holding today is consistent with these

rationales. To allow the admission of illegally obtained evidence at a probation revocation hearing while excluding it at trial might very well lead police officers to “discount the fact that such evidence was inadmissible at a criminal trial, believing that incarceration of the probationer would instead be achieved through the revocation of his probation.” [Payne v. Robinson](#), 207 Conn. 565, 573 (1988), abrogated on other grounds by [Johnson v. Comm’r of Correction](#), 218 Conn. 403 (1991).

I do not stand alone in so resolving this issue. A number of courts have extended the exclusionary rule to probation revocation hearings under similar circumstances. See, e.g., [People v. Ressin](#), 620 P.2d 717, 720–21 (Colo. 1980) (finding exclusion “appropriate as a deterrent” and “necessary in the interest of judicial integrity” where officers “knowingly engaged in a pretext arrest and exploratory search of the defendant because of his probationary status”); [State v. Davis](#), 375 So.2d 69, 75 (La. 1979) (holding that the court should exercise its discretion to exclude the evidence when the illegal search and seizure was conducted by police officers in bad faith and was consciously and purposely directed at a probationer by officers with knowledge of the probationer’s status).

*7 Additional courts have stated in dicta that the exclusionary rule would apply to probation revocation hearings under similar circumstances. See, e.g., [State v. Sears](#), 553 P.2d 907, 914 (Alaska 1976) (“In the event the lawless arrest and search or seizure is carried out by enforcement personnel with knowledge or reason to believe the suspect was a probationer, we would then apply the exclusionary rule in the probation revocation proceeding”); [Ex parte Caffie](#), 516 So.2d 831, 835–36 (Ala. 1987) (under certain circumstances, such as where illegal conduct was specifically directed at a probationer, consideration may weigh in favor of the extension of the exclusionary rule to probation revocation proceedings).

Finally, like the Supreme Judicial Court in *Olsen*, some other courts have declined to exclude illegally obtained evidence from the record at a probation revocation hearing only after determining that the officers who obtained that evidence did not know that their target was on probation. See, e.g., [People v. Perry](#), 201 Mich.App. 347, 351 (1993) (“Where there is no indication that the police knew or had reason to know that they were targeting a probationer, then the exclusionary rule should not apply to probation revocation proceedings ...”); [United States v. Vandemark](#), 522 F.2d 1019, 1022 (9th Cir. 1975) (“Where, as here, the officers are ignorant of the probationer’s status, they also remain unaware of the possibility that he might be subject to sentencing after revocation. Consequently, the threat of exclusion at such a proceeding has little, if any, effect upon their conduct”).

It is true that some courts have allowed the admission of illegally seized evidence at probation revocation hearings, even where the police knew that the subject of an illegal search was a probationer. Some of those courts have refrained from applying the exclusionary rule absent a demonstration of police harassment of the probationer. See, e.g., [United States v. Wiygul](#), 578 F.2d 577, 578 (5th Cir. 1978); [People v. Stewart](#), 242 Ill.App.3d 599, 612–14 (1993) (holding that police officer’s knowledge of probationer’s status did not require exclusion of illegally seized evidence at probation revocation proceeding, in absence of nexus between officer’s knowledge that defendant was on probation and his actions toward defendant). Other courts require “egregious” police misconduct beyond mere knowledge of probationary status before extending the exclusionary rule. See, e.g., [State v. Turner](#), 257 Kan. 19 (1995) (although mere knowledge of defendant’s probationary status is insufficient to create an exception to the general rule, an exception may be warranted if, under totality of circumstances, the police misconduct was so egregious that a need for deterrence outweighed the court’s need for information).

The courts that allow use of illegally obtained evidence at probation revocation hearings often do so because the officer acted in good faith. See, e.g., [Harris v. State](#), 270 Ark. 634, 638 (Ark.Ct.App. 1980) (exclusionary rule inapplicable in revocation proceedings “at least where there has been a good-faith effort to comply with the law”). In essence, these courts are applying the Supreme Court’s ruling in [United States v. Leon](#), 468 U.S. 897 (1984), that the exclusionary rule should not be rigidly enforced; if the officers relied in good faith on search warrant later found constitutionally deficient, for example, the evidence should be admissible even if illegally obtained. [Id.](#) at 923.

Massachusetts, however, “has never adopted the ‘good faith’ exception” to the exclusionary rule. [Commonwealth v. Valerio](#), 449 Mass. 562, 569 (2007). Instead, applying Article 14 of the Massachusetts Declaration of Rights, the courts of this Commonwealth broadly enforce the exclusionary rule regardless of the good faith of police officers. For example, in [Commonwealth v. Hernandez](#), 456 Mass. 528 (2010), the court ruled that heroin and cocaine seized by Boston University police officers during a motor vehicle stop outside of their jurisdiction was properly excluded at trial. [Id.](#) at 528–30. Because the arrest was made without statutory or common-law authority, the court viewed it as an invalid exercise of official power “closely associated with the constitutional right to be free from unreasonable searches and seizures.” [Id.](#) at 532. The *Hernandez* court rejected the Commonwealth’s contention that the evidence should not be excluded because the mistake was made in “good faith.” Instead the court cited the “plain[] prejudice” to the defendant resulting from the discovery of the contraband, and the likelihood that exclusion would deter the abuse of official power, and concluded that exclusion of the evidence was an appropriate remedy. [Id.](#) at 532–33.

*8 As in *Hernandez*, the violation here—an unconstitutional search—was substantial, and Mr. Sheppard was prejudiced by it. Whether the search was carried out in good faith is irrelevant. For the sake of preserving confidence in the processes of government, the evidence must be held inadmissible at the probation revocation hearing. Such a result effectuates the twin rationales of deterrence and judicial integrity, and is consonant with Massachusetts jurisprudence under Article 14.

Conclusion

Mr. Sheppard's Motion to Suppress Evidence is *ALLOWED*. Mr. Sheppard's Motion to Apply the Exclusionary Rule at Probation Revocation Hearing is also *ALLOWED*.

All Citations

Not Reported in N.E.3d, 34 Mass.L.Rptr. 294, 2017 WL 3251607

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Footnotes

- ¹ In his closing argument, the prosecutor incorrectly stated that Mr. Cordero was stopped in Lee, a much sleepier and presumably much safer municipality than Pittsfield. His confusion probably stems from the fact that the state trooper began following Mr. Cordero in Lee and through Lenox. *Id.* at 238. I infer that the stop was made in Pittsfield, the next municipality up Route 20 from Lee and Lenox, because eventually a City of Pittsfield police officer arrived on the scene to assist the troopers. *Id.* at 241.

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CERTIFICATE OF COMPLIANCE

Certificate of Compliance Pursuant to Rule 16(k)
of the Massachusetts Rules of Appellate Procedure

I, Paul B. Stewart, hereby certify that the foregoing complies with the rules of court that pertain to filings in the Massachusetts Appellate Courts, including, but not limited to:

Mass. R. A. P. 16 (a) (13) (addendum);
Mass. R. A. P. 16 (e) (references to the record);
Mass. R. A. P. 18 (appendix to the briefs);
Mass. R. A. P. 20 (form and length of briefs,
appendices, and other documents); and
Mass. R. A. P. 21 (redaction).

/s/ Paul B. Stewart

Paul B. Stewart

Date: July 3, 2019

CERTIFICATE OF SERVICE

I, Paul B. Stewart, hereby certify that, through the electronic means provided by the Clerk, I have served a copy of the APPLICATION FOR DIRECT APPELLATE REVIEW FOR THE DEFENDANT/APPELLANT, filed by the Appellant in Supreme Judicial Court regarding Appeals Court No.: 2019-P-0608, on counsel of record for the Commonwealth.

/s/ Paul B. Stewart

Paul B. Stewart

Date: July 3, 2019