COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPREME JUDICIAL COURT
No.

APPEALS COURT
No. 2019-P-1498

COMMONWEALTH

v.

INDIAH BOGER

DEFENDANT'S APPLICATION FOR DIRECT APPELLATE REVIEW OF THE ORDERS OF THE SALEM DISTRICT COURT

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COMMONWEALTH OF MASSACHUSETTS

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COMMONWEALTH

v.

INDIAH BOGER

APPLICATION FOR DIRECT APPELLATE REVIEW

Defendant Indiah Boger applies pursuant to Mass. R.A.P. 11 for direct appellate review of rulings underlying her conviction in the Salem District Court of distributing a controlled substance within one hundred feet of a public park.

The defendant's appeal raises two related and unresolved issues of law in relation to G.L. c. 94C, § 32J, the school and park zone statute. First, whether the Commonwealth must prove that the land in question is owned or maintained by a governmental entity in order to satisfy "public park" element. Recently, in Commonwealth v. Matta, No. SJC-12693 (Oct. 21, 2019), this Court analyzed the "public park" language of § 32J and concluded that the term "park" was defined as "a tract of land maintained by a city or town as a place of beauty or of public recreation"

and that it is the province of the jury to determine whether the land in question was publicly owned or maintained and dedicated for recreational use by the public. Because both ownership and maintenance by a governmental entity was established in that case, the Court was not required to reach the issue of the extent of governmental involvement necessary to render a tract a "public park." This case squarely raises that question.

The evidence at trial regarding the nature of the alleged "public park" was limited to the testimony of the undercover detective who orchestrated a sting operation as well as photographs and satellite images of the parking area where the underlying transaction occurred. The detective testified that the conduct occurred in the parking area of a large recreation area. He testified that the parking area was maintained by a conservation trust, but that he did not know whether the trust was a private entity. He did not know who owned the tract, but he believed some portion of the thousands of acres of wilderness was owned by the towns of Manchester or Essex. The detective admitted, however, that he did not know the location of the boundaries to any such municipal land. There was no testimony by a representative of the

trust, a town assessor, or an engineer with knowledge of the boundaries, ownership, or maintenance of the land in question. No maps or other documentary evidence were admitted in evidence that indicated the boundaries or ownership of the land in question.

The trial judge instructed the jury that they may "consider all the credible evidence when deciding if" the land in question constituted a "public park" under the statute. The judge further instructed the jury that they could consider factors that included, but were not limited to, "use and access by the public, maintenance and security by public officials, ownership by government entities, including towns, cities, or municipalities." This instruction thus did not require the jury to find that the land was owned or maintained by a governmental entity in order to conclude that the land constituted "public park." After asking to be reinstructed twice on the definition of "park," the jury convicted the defendant of distributing a controlled substance within one hundred feet of a public park.

The question of the Commonwealth's proof as to the government involvement necessary to render a tract a "public park" under the statute was squarely raised by the evidence in this case and requires

the resolution of this Court to definitively determine what the Commonwealth must prove for this offense—a question that remains open after Matta.

The second issue raised by this appeal is whether sentencing entrapment must be available as a defense to an alleged school or park zone violation in cases where law enforcement initiates a drug transaction and selects the location of the transaction. Although this Court has declined to recognize a sentencing entrapment defense in the context of alleged government inducement to sell quantities of controlled substances sufficient to trigger enhanced sentences, the Court has not addressed the applicability of sentencing entrapment to a prosecution under the school or park zone statute.

Section 32J has unique characteristics that necessitate the availability of a sentencing entrapment defense in certain circumstances in order to remain consistent with due process protections. The statute provides that "lack of knowledge of school boundaries shall not be a defense to any person who violates the provisions of this section." In Matta, this Court recently held that, although this provision does not directly address "public parks," a lack

of knowledge or intent of the boundaries of a public park is not a defense to a charged violation of the park zone provision of § 32J. Accordingly, the statute contains an aspect of strict liability, in that the Commonwealth does not have to prove that a defendant either intended to commit the underlying offense in one of the enumerated areas or even that a defendant had knowledge that the offense was occurring within one of the enumerated areas.

This strict liability aspect of the statute raises unique due process concerns where a defendant is induced to violate the statute by a government agent but precluded from raising any knowledge or intent defense to the charge. The facts of this case put those concerns into stark relief. The underlying transaction was set in motion by an undercover police detective who posted to a website expressing interest in cocaine. In response to his posting, the detective received an offer to sell him cocaine and to make the exchange in a public place. The detective then asked the seller to come to him, and when the seller asked if they could meet elsewhere, the detective insisted the seller come to him. The detective then provided directions to the location he selected. The defendant and the co-defendants followed those directions,

engaged in a transaction with the detective at the location the detective selected, and were arrested shortly thereafter for committing a controlled substance offense near a park zone.

At trial, defense counsel attempted to ask the detective whether he knew that the location he selected would result in more severe penalties in any subsequent prosecution. The judge sustained the Commonwealth's objection to that question and told defense counsel that sentencing entrapment was not a recognized defense.

Given the strict liability aspect of the statute and the judge's ruling that sentencing entrapment was not a recognized defense, this case presented a situation where the location of the transaction was the product of government inducement, but the defendant had no avenue to raise such a defense. The refusal to allow defense counsel to develop testimony relevant to sentencing entrapment in such circumstances resulted in a violation of the defendant's due process rights.

The issue of whether a sentencing entrapment defense is available in the unique context of the school and park zone statute presents a novel issue of law, one that implicates the fairness and legitimacy of

tactics used by law enforcement in sting operations, and one that should be decided by this Court.

As further support for her Application, the Defendant relies upon the attached Memorandum of Law.

Respectfully submitted,

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By her attorney:

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Dated: November 1, 2019

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPREME JUDICIAL COURT
No.

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No. 2019-P-1498

COMMONWEALTH

v.

INDIAH BOGER

MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR DIRECT APPELLATE REVIEW

I. STATEMENT OF PRIOR PROCEEDINGS

The defendant, Indiah Boger, along with two co-defendants, was arrested on August 9, 2016, after an interaction with an undercover police detective who had orchestrated a sting operation to purchase cocaine. The three were charged by complaint in Salem District Court with one count of distribution of a class B controlled substance, in violation of G.L. c. 94C, § 32A, and one count of committing a controlled substance offense near a school or park, in violation of G.L. c. 94C, § 32J.[1] The defendant and the two co-defendants were tried jointly

[1] The defendants were also charged with conspiring to violate drug laws, in violation of G.L. c. 94C, § 40. That charge was dismissed at the request of the Commonwealth.

before a jury on June 11 and 12, 2018. During trial, defense counsel attempted to ask the undercover detective whether he was "aware that any sales that occur in this area would increase any penalty under law." II:42. The court sustained the Commonwealth's objection to this question, stating to defense counsel that "[s]entencing entrapment is not a recognized defense." II:43-44. The jury eventually returned guilty verdicts on both the distribution and park zone counts as to the defendant and one co-defendant. The other co-defendant was acquitted of both charges. The defendant was sentenced to the mandatory minimum sentence of two years in the house of correction on the park zone conviction, to be served from and after a one-day sentence on the distribution conviction. The defendant timely filed a notice of appeal, and the case entered in the Appeals Court on October 15, 2019.

II. FACTS RELEVANT TO THE APPEAL

The charges in this case arose from a sting operation orchestrated by Manchester-by-the-Sea Police Detective Christopher Locke. Detective Locke posted a listing on Craigslist indicating an interest in cocaine. I:129, 132. Detective Locke eventually received a response by email that indicated that the person replying had cocaine to sell. I:136-

137, 139. The conversation quickly migrated to text messages, where an amount of cocaine and the price were settled. I:139, 143-144; Ex. 3. The seller indicted that the exchange could occur in public and that Detective Locke could sample the product. Ex. 3. Detective Locke asked the seller to come to him in Manchester-by-the-Sea. Ex. 3. The seller responded by asking whether the location he was referring to was in Massachusetts or New Hampshire and whether Detective Locke was "mobile." Ex. 3. Detective Locke responded that he was in Manchester, Massachusetts and that he could not meet elsewhere because "his girl w[ould] freak" if he left. Ex. 3. Detective Locke said he could have someone drive him to close to the highway, though. Ex. 3. The seller then indicated that they could come to him, but they would need an additional forty dollars to pay the driver. Ex. 3. The seller then asked whether the location was in Manchester-by-the-Sea or Manchester, New Hampshire. Ex. 3. Detective Locke responded that he was in Manchester-by-the-Sea and provided directions from the highway to a "parkin[g] area" where he would await the sellers. Ex. 3. In response to the seller's statement that it would take nearly two hours to arrive at the location, the detective stated again that the location was

Manchester-by-the-Sea, Massachusetts and not Manchester, New Hampshire. Ex. 3. After this clarification, the seller said they were just over a half hour from the location. Ex. 3. In response to the detective's question, the seller indicated that they would be arriving in a blue Honda. Ex. 3.

Sometime later, a blue Honda with three occupants pulled into the parking area selected by Detective Locke. I:156-157, 159. The defendant was identified as the rear seat passenger in the car. I:159-161. Detective Locke approached the car and handed money to the front seat passenger. I:161-162. The rear seat passenger then handed the detective a baggie containing white powder later determined to contain cocaine. I:163; II:73. The blue Honda left the parking area and was stopped immediately thereafter by police officers working with Detective Locke. I:164. All three occupants of the car were arrested at that time. I:169.

At trial, the only evidence put on by the Commonwealth as to the nature of the location where the transaction occurred was the testimony of Detective Locke as well as photographs and satellite images of the parking area and adjacent locations. Detective Locke testified that the

location of the transaction was a parking area for a location known as the Cathedral of the Pines, which he described as a recreation area or nature reserve of several thousand acres open to the public for walking, hiking, and fishing. I:126-127, 151, 157. He testified that the parking area is maintained by the Manchester Essex Conservation Trust, II:31, but that he was unsure whether the Trust was a public or private entity, or even whether the Trust owned the property. II:40, 46, 62. Detective Locke indicated his belief that some of the land within the thousands of acres of wilderness that he understood to constitute the Cathedral of the Pines was owned by the towns of Manchester or Essex, I:126, II:46, but he explicitly denied any knowledge about where the boundaries to any such town-owned land may have been. II:46. The Commonwealth did not introduce any maps or other documentary evidence that established the ownership or boundaries of the Cathedral of the Pines or any portion thereof.

Detective Locke testified that ten months after the arrests in this case, II:57, he returned to the parking area and made two measurements from the location where the blue Honda had parked: one to the "wood line, which is where the hiking trails are"; and another to

the "trail head," which he also described as the "main entrance . . . where most people enter the woods to go hiking." II:21-22. The measurement to the "wood line" was twenty-seven feet. II:22. The measurement to the "trailhead" was 151 feet. II:22. Only the measurement between the Honda and the "wood line" was within the statutorily prescribed distance of one hundred feet from a public park or playground.

The trial judge, recognizing that whether the location constituted a "public park" was a critical issue and that the then-existing model jury instructions did not contain a definition of "public park," solicited submissions from counsel on how to instruct the jury. II:10-11. The judge ultimately decided on the following definition and instructed the jury that

> A public park is defined as an open or a closed tract of land set aside for recreation and enjoyment of the public, or in the general acceptance of the term, a public park is said to be a tract of land, great or small, dedicated and maintained for the purposes of pleasure, exercise, amusement, or ornament; a place to which the public at large may resort to for recreation, air, and light. You should consider all the credible evidence when deciding if this area was a public park, including the use and access by the public, maintenance and security by public officials, ownership by government entities, including towns, cities, or municipalities. Those are some, but not all of the factors that

> you consider when you decide whether or not this was a public park.

II:163-164. After receiving this instruction, the jury twice requested to be reinstructed on the definition of a park. II:171, 173.

III. ISSUES OF LAW RAISED BY THE APPEAL

1. Whether the Commonwealth must prove that the land constituting a "public park" under G.L. c. 94C, § 32J is owned or maintained by a governmental entity.
2. Whether sentencing entrapment must be available as a defense to a school or park zone offense where a police detective chose the location for the underlying transaction and insisted that the transaction occur there.

These issues are preserved for the Court's review. As to the definition of "public park," defense counsel argued in a motion for a required finding of not guilty that the Commonwealth had not met its burden to prove that the area in question constituted a "public park." II:89. Defense counsel also objected after the judge instructed the jury as to what constitutes a "public park." II:165.

As to the sentencing entrapment issue, defense counsel attempted to ask the detective who orchestrated the sting operation whether he was "aware that any sales that occur in [that location] would increase any penalty under law," thus raising the question of whether the location chosen by the detective was selected purposefully to increase

the penalty in any prosecution that would follow. II:42. The court sustained the Commonwealth's objection to the question and informed defense counsel that "[s]entencing entrapment is not a recognized defense." II:43-44.

IV. ARGUMENT

1. The Commonwealth must prove that the tract alleged to constitute a "public park" pursuant to G.L. c. 94C, § 32J is owned or maintained by a governmental entity.

The Commonwealth failed to introduce any evidence establishing ownership or maintenance of the property in question by a governmental entity. While the court's instructions invited jurors to consider multiple factors in deciding whether the property constituted a "public park"—including ownership or maintenance by governmental entities—it did not require them to find that the tract was owned or maintained by such an entity. Because a recent decision of this Court, the language of the statute, and canons of construction all indicate that a "public park" must be owned or maintained by a governmental entity, the evidence was insufficient as to the "public park" element and the judge's instructions on that element were erroneous.

General Laws c. 94C, § 32J prohibits commission of controlled substance offenses "within [one hundred] feet of a public park." The Commonwealth bore the burden to prove that the tract in question constituted a "public park." Cf. Commonwealth v. Bell, 442 Mass. 118,

122-123 (2004) (Commonwealth "must prove that the school is one of the types enumerated in the statute").

Recently, in Commonwealth v. Matta, No. SJC-12693 (Oct. 21, 2019), this Court examined the term "park" as used in § 32J. Matta, at *25-*28. Matta addressed the question of whether a walkway owned and maintained by the City of Holyoke constituted a "park." Id. at *25-*28, *31. Because both governmental ownership and maintenance were established in that case, the Court was not required to reach the issue of the extent of governmental involvement necessary to render a tract a "public park." This case squarely raises that question.

The decision in Matta, the language of the statute, and relevant canons of statutory construction all indicate a requirement for the Commonwealth to prove governmental ownership or maintenance for a tract to constitute a "public park." In Matta, the Court adopted a definition of "park" that includes a requirement of maintenance "by a city or town." See Matta, at *25 (defining "park" in part as "a tract of land maintained by a city or town"). Further, the Court noted that it was for the jury to determine "whether a tract of land is publicly owned or maintained and dedicated for enjoyment and recreational use by the

public" so as to meet the statutory definition of 'park.' Id. at *27. Although not at issue in that case, Matta appears to require that a 'public park,' at a minimum, be owned or maintained by a governmental entity. See id. at *25-*27.

The Court's implicit conclusion that a tract alleged to constitute a "public park" must be owned or maintained by a governmental entity flows from the language of the statute and canons of statutory construction. Section 32J states that "[a]ny person who [commits a specified controlled substance offense] . . . within [one hundred] feet of a public park or playground . . . shall be punished." As discussed in Matta, the term "park" implies access and use by the public. See Matta, at *25-*26, quoting Webster's Third New International Dictionary 1642 (1993) (defining "park" as "a tract of land maintained by a city or town as a place of beauty or of public recreation"); see also id. at *28 n.16 (citing approvingly jury instruction defining "park" as "land set apart for the recreation and enjoyment of the public"). Given that the definition of "park" inherently connotes public access and use, the legislature's use of the adjective "public" to modify "park" unambiguously indicates an intent for the statute to apply to land

owned or maintained by a governmental entity. "Public," in this sense, indicates an object "authorized or administered by or acting for the people as a political entity." Webster's Third New International Dictionary 1836 (2002). Reading the term "public" in "public park" solely to embrace public access but not requiring governmental ownership or maintenance, as the trial court did in this case, renders the legislature's use of "public" superfluous. See Commonwealth v. Disler, 451 Mass. 216, 227 (2008) ("[E]very word in a statute should be given meaning . . . and no word is considered superfluous." [citations omitted]).

Interpreting "public park" to require public ownership or maintenance is also supported by other canons of statutory construction. To the extent the term "public park" could be fairly read to encompass either land owned or maintained by a governmental entity on one hand or privately owned land that is open to the public on the other, the existence of the two readings would render the statute ambiguous. See Commonwealth v. Gopaul, 86 Mass. App. Ct. 685, 690 (2014). Pursuant to the rule of lenity, such an ambiguity would have to

be resolved against the Commonwealth and in favor of the narrower reading. See id.

Moreover, if the statute were read to include privately owned land accessible to the public, that reading could expand the reach of the statute to open spaces on grounds of private universities, private amusement parks, privately owned sports stadiums, or the growing number of privately owned but publicly accessible spaces in urban buildings. Expanding the reach of the statute to such an extent would raise significant due process concerns arising from the failure to provide adequate notice of prohibited conduct, [2] see Commonwealth v. Arthur, 420 Mass. 535, 541 (1995) (holding application of statute violated due process by failing to provide adequate notice), which counsels adopting the narrower interpretation, see Commonwealth v. Buckley, 354 Mass. 508, 512 (1968).

[2] Such an expansion of potential liability under § 32J in more urban areas would also resurrect the potential of applications of the statute to result in "an unfair disparate impact on those residing in urban areas" that both the legislature and this Court have recognized. Commonwealth v. Peterson, 476 Mass. 163, 169 (2017), quoting Commonwealth v. Bradley, 466 Mass. 551, 559 (2013).

2. The court's refusal to allow the defendant to pursue a defense of sentencing entrapment to a park zone offense where law enforcement selected the location of the transaction and insisted that the transaction occur in that location violated the defendant's due process rights.

The detective who orchestrated the sting operation in this case selected the location where the transaction would take place, provided directions to the location that he had selected, and insisted that the transaction take place there. The judge's refusal to allow defense counsel to develop testimony regarding government inducement to conduct the transaction in a park zone violated the defendant's due process rights by foreclosing the only defense available on the park zone charge.

Sentencing entrapment refers to a situation where the government induces a defendant to commit an offense that subjects the defendant to greater penalties than the offense he or she was predisposed to commit. Commonwealth v. Saletino, 449 Mass. 657, 658 n.1 (2007). The Court has previously declined to recognize sentencing entrapment as a defense in the context where a defendant is induced to sell amounts of controlled substances that trigger more severe sentences. See id. at 664-665; Commonwealth v. Cruz, 430 Mass. 838,

846-847 (2000). The Court, however, has never addressed whether sentencing entrapment is applicable in the distinct context of the school and park zone statute. Commonwealth v. Lawrence, 69 Mass. App. Ct. 596, 605 (2007) (Brown, J., concurring).

Unique aspects of § 32J make a sentencing entrapment defense necessary as a matter of due process. Section 32J is "not an ordinary crime," Lawrence, 69 Mass. App. Ct. at 604, in that a conviction for a school or park zone offense does not require the Commonwealth to establish the intent to commit the underlying offense within the prohibited area nor knowledge that the transaction is occurring in that area. See Matta, at *23-*25. In this way, the section contains "an aspect of strict liability" in that there is no mens rea requirement with regard to the location of the transaction within a prohibited area. Commonwealth v. Peterson, 476 Mass. 163, 165-166 (2017). As recently confirmed by this Court in Matta, "§ 32J is violated any time one of the enumerated drug offenses occurs in that specified location." Matta, at *23.

While the legislature has the power to create strict liability crimes, courts have acknowledged some limits on the creation of

offenses not requiring proof of mens rea. Specifically, the Supreme Court has held a statute to be unconstitutional where it subjected a defendant to a severe penalty without providing "an opportunity either to avoid the consequences of the law or to defend any prosecution brought under it." Lambert v. California, 355 U.S. 225, 229 (1957). This Court has itself applied that reasoning, noting a statute that combines a severe penalty with a deprivation of any opportunity to challenge an essential element of the offense might go "beyond the constitutional pale." Commonwealth v. Crosscup, 369 Mass. 228, 234-235 (1975).

Here, decisional law on strict liability offenses combines with the concerns about the proper role of law enforcement that underlie the substantive defense of entrapment. Commonwealth v. Harvard, 356 Mass. 452, 458-459 (1969); Commonwealth v. Thompson, 382 Mass. 379, 383 (1981). The evidence at trial in this case would have allowed the jury to find that the detective who orchestrated the sting operation selected the location for the transaction and insisted that the transaction take place in that location after the seller asked if it could take place elsewhere, thus supporting a finding that police—who also initiated the underlying transaction—were actively seeking to draw the

defendants into committing a more serious crime with a mandatory minimum sentence. Trial counsel attempted to elicit from the detective testimony regarding his awareness that his selection of that location ensured that any transaction that followed would be subject to more severe penalties. The trial judge sustained the Commonwealth's objection to that question and told trial counsel that "[s]entencing entrapment is not a recognized defense." II:43-44.

The result was a conviction for a two-year mandatory minimum sentence where the Commonwealth did not have to establish the intent for the transaction to take place in a prohibited area nor knowledge that the transaction was taking place in a prohibited area. While the absence of a mens rea requirement does not violate due process in and of itself, in this case, the due process issue arises because the defendant's ability to avoid the offense was tainted by governmental inducement. The government caused the transaction to occur in a park zone, and the strict liability aspects of the statute deprived the defendant of any opportunity to defend against the offense. See Lambert, 355 U.S. at 229; Crosscup, 369 Mass. at 234-235. This result crosses the line to violate due process.

This case directly raises questions about the role of law enforcement in inducing commission of strict liability offenses. While certainly police can "set[] traps to catch those bent on crime," Harvard, 356 Mass. at 459, the detective here did more than that. By selecting the location of the transaction, insisting that the transaction occur at that location, and in directing the seller to the location, the detective was bringing about a criminal offense—a park zone violation—that "otherwise would never have been perpetrated."[3] See id., quoting R. Perkins, Criminal Law 921 (2d ed. 1969). Such law enforcement conduct is intolerable. Id. Permitting a sentencing entrapment defense in appropriate cases is the only effective mechanism to dissuade law enforcement from engaging in such conduct and avoid the implicit imprimatur of the courts in prosecutions arising from such conduct. See Sorrells v. United States, 287 U.S. 435, 446, 448-449 (1932).

[3] The conduct of the detective to intentionally bring a drug transaction into a park zone is particularly troubling in light of the recognized purpose of § 32J to remove the dangers of controlled substance transactions from locations where children learn and play. See Matta, at 24; Lawrence, 69 Mass. App. Ct. at 604 n.5.

V. REASONS DIRECT REVIEW IS APPROPRIATE

The defendant's application raises important questions of regarding the reach and available defenses to a frequently charged offense implicating a two-year mandatory minimum sentence. Although § 32J was recently and substantially amended, the term "public park or playground" remains unamended in the statute. The resolution of these questions will thus not only affect whether this defendant serves a mandatory minimum sentence, but the reach of the statute for every defendant charged with a park zone violation in the future. The resolution of these questions also implicates the "unfair disparate impact on those residing in urban areas" historically created by this statute. For these reasons, this Court's review is necessary to definitively resolve these important statutory questions.

Respectfully submitted,

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Dated: November 1, 2019

CERTIFICATE OF COMPLIANCE

I certify that the foregoing complies with the applicable rules of appellate procedure, including, but not limited to: Rule 11(b) (contents of application for direct appellate review); Rule 20 (form and length of briefs, appendices, and other documents); and Rule 21 (redaction). Compliance with Mass. R.A.P. 11(b) was ascertained using the word count feature of Microsoft Word for Office 365. This Application for Direct Appellate Review has been produced using 14-point Century Schoolbook, a proportionally spaced font. The number of words in the argument section of the Application is 1,996.

Nicholas Matteson

CERTIFICATE OF SERVICE

I hereby certify, under pains and penalties of perjury, that I have on this date made service upon the Commonwealth by directing that a copy of this Application for Direct Appellate Review be electronically served on Assistant District Attorney Catherine L. Semel, by the Court's e-file protocol.

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dated: November 1, 2019

APPENDIX

CRIMINAL DOCKET

DOCKET NUMBER	NO. OF COUNTS	Trial Court of Massachusetts District Court Department
1636CR001805	3	

DEFENDANT NAME AND ADDRESS	DOB	GENDER	COURT NAME & ADDRESS
Indiah Boger 872 Washington Street Dorchester, MA 02124-	01/05/1996	Female	Salem District Court 56 Federal Street Salem, MA 01970
	DATE COMPLAINT ISSUED 08/10/2016		
	PRECOMPLAINT ARREST DATE 08/09/2016		INTERPRETER REQUIRED

FIRST FIVE OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	94C/32A/E	DRUG, DISTRIBUTE CLASS B c94C §32A(a)	08/09/2016
2	94C/32J	DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J	08/09/2016
3	94C/40	CONSPIRACY TO VIOLATE DRUG LAW c94C §40	08/09/2016

ARREST

DEFENSE ATTORNEY	OFFENSE CITY/TOWN	POLICE DEPARTMENT
Seiberg	Manchester	Manchester PD

DATE & JUDGE	DOCKET ENTRY	DATE & JUDGE	FEES IMPOSED
Swan	☑ Attorney appointed (SJC R. 3:10) ☐ Atty denied & Deft. Advised per 211 D §2A ☐ Waiver of Counsel found after colloquy	8.10.16	Counsel Fee (211D § 2A¶2) $ 150 ☑ WAIVED
	Terms of release set: ☐ PR ☐ Bail 1000 ☐ See Docket for special condition ☐ Held (276 §58A)		Counsel Contribution (211D § 2) $ ☐ WAIVED Default Warrant Fee (276 § 30¶1) $ ☐ WAIVED Default Warrant Arrest Fee (276 § 30 ¶2) $ ☐ WAIVED
	Arraigned and advised: ☐ Potential of bail revocation (276 §58B) ☐ Right to bail to review (276 §58) ☐ Right to drug exam (111E § 10) ☐ Inquiry made by Court under 276 § 56A		Probation Supervision Fee (276 § 87A) $ ☐ WAIVED Bail Order Forfeited **Advised of right to jury trial:** ☐ Waiver of jury found after colloquy ☐ Does not waive
	Abuse Allegation: ☐ C276 § 56A form filed by Commonwealth ☐ Allegation of abuse under C276 § 56A found ☐ No allegation of abuse under C276 § 56A found		Advised of trial rights as pro se (Dist. Ct. Supp.R.4) Advised of right of appeal to Appeals Ct. (M.R. Crim P.R. 28)

SCHEDULING HISTORY

NO.	SCHEDULED DATE	EVENT	RESULT	JUDGE	TAPE START/ STOP
1	08/10/2016	Arraignment	☑ Held ☐ Not Held but Event Resolved ☐ Cont'd	Swan	
2	9.8.16	PTH	☑ Held ☐ Not Held but Event Resolved ☐ Cont'd	Swan	(A)
3	11.3.16	C+E	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd	Brennan	
4	12.15.16	C/E	☑ Held ☐ Not Held but Event Resolved ☐ Cont'd	Swan	
5	2.8.17	Mot	☐ Held ☐ Not Held but Event Resolved ☑ Cont'd	Karstetter	
6	3.29.17	Mot	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd	Karstetter	(F)
7	5.9.17	C&E	☑ Held ☐ Not Held but Event Resolved ☐ Cont'd	Karstetter	
8	6.22.17	Dispo	☐ Held ☐ Not Held but Event Resolved ☑ Cont'd	Fitzpatrick	
9	7.31.17	Dispo	☐ Held ☐ Not Held but Event Resolved ☑ Cont'd	Karstetter	
10	8.15.17	PRD @2pm	☐ Held ☐ Not Held but Event Resolved ☐ Cont'd		

APPROVED ABBREVIATIONS

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

A TRUE COPY ATTEST:	CLERK-MAGISTRATE / ASST CLERK	TOTAL NO. OF PAGES	ON (DATE)
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1636CR001805

Revised: 07/16

CRIMINAL DOCKET - OFFENSES

DEFENDANT NAME: **Indiah Boger**

DOCKET NUMBER: **1636CR001805**

COUNT / OFFENSE: **1 DRUG, DISTRIBUTE CLASS B c94C §32A(a)**

DISPOSITION DATE AND JUDGE: 6-12-18 Chapman

DISPOSITION METHOD
- ☐ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12
- ☐ Bench Trial
- ☒ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until: C. 1 day HoC cont'd
- ☐ Defendant placed on probation until:
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☒ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE: **2 DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J**

DISPOSITION DATE AND JUDGE: 6-12-18 Chapman

DISPOSITION METHOD
- ☐ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12
- ☐ Bench Trial
- ☒ Jury Trial
- ☐ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☐ Defendant placed on probation until: C. 3yrs HoC cont'd from s/ after ct #1
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING
- ☒ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

COUNT / OFFENSE: **3 CONSPIRACY TO VIOLATE DRUG LAW c94C §40**

DISPOSITION DATE AND JUDGE: 6-12-18 Chapman

DISPOSITION METHOD
- ☐ Guilty Plea or ☐ Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12
- ☐ Bench Trial
- ☐ Jury Trial
- ☒ Dismissed upon:
  - ☐ Request of Commonwealth ☐ Request of Victim
  - ☐ Request of Defendant ☐ Failure to prosecute
  - Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
HEAD INJURY ASMT	**RESTITUTION**	**V/W ASSESSMENT**	**BATTERER'S FEE**	**OTHER**

SENTENCE OR OTHER DISPOSITION
- ☐ Sufficient facts found but continued without a finding until:
- ☐ Defendant placed on probation until:
  - ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by: w/consent of A

FINDING
- ☐ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION — JUDGE — DATE
- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

CRIMINAL DOCKET DOCKET ENTRIES	DEFENDANT NAME Indiah Boger	DOCKET NUMBER 1636CR001805

DATE	DOCKET ENTRIES
2/3/17	Defendant's motion to suppress evidence filed by Atty. Andrew Zeiberg
8.15.17	PRD not held w/ Brennan, J
	C. 9.15.17 PRD 2nd call
	C. 11.3.17 PRD
11.3.17	12.20.17 MOT continued
	1.24.18 JTR
	Aff. JTR list for 1.24.18
	@ 1.24.18 MOT
1.24.18	Δ joins oth counsel on motion to Suppress
	docket 1636CR1804 under advisement
	Karsteter, J C. JTR 3.21.18
1-25-18	motion to suppress - allowed as to purse, denied as to console (Karsteter, J)
3.21.18	Before J Karsteter - Motion to Sever heard & TWA -
(F)	
10.09.07	Jury trial scheduled 6-11-18
3/21/18	motion to sever - Denied (Karsteter, J)
6.11.18	Mot to join in w/ mot to dism - all'd
	Mot to dism ultimately denied / Brennan
	11:05 further MOT / 12:03 Jury enters / 1:15 lunch recess
2:30	jury sworn / 2:38 Comm opening
2:41	Δ Leneus opening / 2:42 Δ Trevino opening / 2:44 Δ Boger opening
2:46	Detective Chris Locke Sworn / 3:30 Δ ID'd by witness
3:57	recess
	Exhibits 1-11 previously entered on 6-11-18

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

Date/Time Printed: 08-10-2016 09:05:54

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CRIMINAL DOCKET DOCKET ENTRIES	DEFENDANT NAME Indiah Boger	DOCKET NUMBER 1636CR001805

DATE	DOCKET ENTRIES
6-12-18	
9:18	Back for record
10:06	Testimony of Det. Locke resumes
	Exhibit 12 entered by Comm. (published to jury)
	Exhibit 13 entered by Comm
	Exhibit 14 entered by Comm
	Exhibit 15 entered by Comm
	Exhibit 16 entered by Comm.
	Exhibit 17 entered by Comm (published to jury)
	Exhibit 18 entered by Comm
10:22	Cross examination of Seavey
	Exhibit 19 entered by D
10:32	Cross of Zeisler
	Exhibit 20 entered by D
10:41	Cross examination of Lemerd
10:55	Re-direct
10:57	Recess
11:05	Comm. calls Jenna Vigneault-Mass State Police Chemist
	Sworn & testifies
	D's A marked Exhibit 21
11:18	Cross of Seavey
11:27	Cross of Zeisler
11:28	Re-direct
11:30	Comm. rests
	Mot for required finding: Denied
11:40	D calls Ketson Lemerd
	Sworn & testifies
11:47	Cross by Comm.
11:59	Cross by D Zeisler

APPROVED ABBERIVATIONS

ARR = Arraignment PT= Pretrial hearing CE = Discovery compliance & jury selection T = Bench trial JT = Jury trial PC = Probable cause hearing M = Motion hearing SR= Status review
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CRIMINAL DOCKET DOCKET ENTRIES	DEFENDANT NAME Indiah Boger	DOCKET NUMBER 1636CR001805

DATE	DOCKET ENTRIES
12:03	CROSS ☑ Leonard
12:07	Re-cross ☑ Zeibert
	Re-Direct ☑ Scavuzzo
12:09	☐ COSTS
	Not requested Fining - Denied
12:12	Closing
1:08	Jury retires to consider verdict
1:10	Recess ☐ to remain on 4th floor during recess
2:14	Jury Question Addressed by J Chapman
	review deliberations
	Question Mk'd Identification B
2:54	Jury Question Mk'd Identification C.
	Written definition of "Fare" Mk'd Identification D
	sent to jury
3:48	Jury in Verdict entered
	Ct #1 Guilty
	Ct # 2 Guilty
	Verdict slip Mk'd Identification E
	Con-Mitt for sentencing
	3:58 adj/record
6-13-18	CC Fee Waived - PS
6-13-18	BAIL RETURN Cash # 13806 $1000 - PS
	(Aff + ID's Attached to Recog)
7-9-18	motion to withdraw, motion to revoke + revise sentence, motion for appointment of Appellate Counsel & Notice of Appeal filed by Atty Andrew Zeibert

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CRIMINAL DOCKET DOCKET ENTRIES	DEFENDANT NAME Indiah Boger	DOCKET NUMBER 1636CR001805

DATE	DOCKET ENTRIES
10.17.18	Request for warrant. Mitt. released & remanded
	Date of Offense 8/9/16, arraigned 8-10-16 (Bail set @ $1,000. each)
	Bailed out 8-16-16 (Bail posted on 8.22.16)
	8-9-16 - 8-16-16 = 8 days credit.
11/20/18	NAC rec'd from CPCS appointing Atty. Nicholas Matteson to appear

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