

SJC-13816

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

COMMONWEALTH,
Appellee,

v.

JOSE ARIAS,
Appellant.

ON APPEAL FROM A JUDGMENT OF
THE SUFFOLK SUPERIOR

REPLY BRIEF OF THE APPELLANT
****REFERENCES IMPOUNDED MATERIAL****

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October 1, 2025

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GLOSSARY

Mr. Arias's principal brief is referred to as (D.Br.*page*), and the Commonwealth's brief is referred to as (C.Br.*page*).

Record Appendix Volume One is referred to as (R1.*page*). Record Appendix Volume Two is referred to as (R2.*page*). The Impounded Record Appendix is referred to as (IR.*page*). The Addendum is referred to as (A.*page*). The transcripts are referred to as (Tvolume/*page*), and the transcript volume numbers correspond to the following dates:

T1 – 12/10/2019 – pretrial hearing

T2 – 1/27/2020 – pretrial hearing

T3 – 1/13/2021 – pretrial hearing

T4 – 4/27/2021 – motion to suppress hearing

T5 – 9/12/2023 – trial 1, day 1

T6 – 9/13/2023 – trial 1, day 2

T7 – 9/14/2023 – trial 1, day 3

T8 – 9/15/2023 – trial 1, day 4

T9 – 3/5/2024 – pretrial hearing

T10 – 3/8/2024 – pretrial hearing

T11 – 3/11/2024 – trial 2, day 1

T12 – 3/12/2024 – trial 2, day 2

T13 – 3/13/2024 – trial 2, day 3

T14 – 3/14/2024 – trial 2, day 4

T15 – 3/15/2024 – motion hearing

T16 – 3/25/2024 – motion hearing and sentencing

ARGUMENT

I. The March 28 stop was not justified based on the alleged observation of a civil infraction a full day earlier – which was not even the “real reason” for the stop.

A. Waiting one full day to use the traffic infraction as a pretext to stop Mr. Arias was unreasonable where the Commonwealth failed to establish that police were unable to stop Mr. Arias on March 27, or on Foster Street the following day.

Mr. Arias contends that the delay in initiating the traffic stop – of one full day – was unreasonable. (D.Br.19-26). In response, the Commonwealth argues that Officer Pieroway was “unable to safely stop [Mr. Arias] at the time of the traffic violation [on March 27] and did not continue to monitor him immediately after the violation.” (C.Br.16). The Commonwealth relies on Officer Pieroway’s testimony “that after he observed the traffic violation ‘it was unsafe for us to follow the vehicle any further’ and surveillance was terminated.”¹ (C.Br.16, citing T4/60-61).

However, the Commonwealth’s argument overlooks a crucial fact: Officer Pieroway was incapable of stopping the SUV himself because his

¹ The Commonwealth overstates the severity of Mr. Arias’ March 27 driving infraction, claiming that Officer Pieroway saw him “speed across lanes.” (C.Br.16). The motion judge found that Mr. Arias “pull[ed] the SUV quickly around the right side of the line of traffic, which was stopped at the South Street stop sign, pass[ed] approximately seven vehicles stopped at the intersection, fail[ed] to stop at the stop sign, and [took] an immediate left in front of the line of traffic.” (R2.42;A.27). After hearing the evidence, the judge rejected the prosecutor’s characterization of speeding, determining, “I don’t have any testimony that [Mr. Arias’ maneuver] was above the speed limit.” (T4/131).

unmarked vehicle lacked lights, sirens, or “any means to pull a car over.” (T4/78-79). Officer Pieroway’s normal practice, when he sought to initiate a traffic stop, was to call for a marked police unit, equipped with lights and a siren, to effectuate the stop. (T4/78-79). As such, the Commonwealth’s explanation for Officer Pieroway’s failure to address the traffic infraction fails. It is of no moment that *Officer Pieroway* could not continue following Mr. Arias, and “safely stop” him, because Officer Pieroway was *wholly incapable*, in any event, of effectuating a motor vehicle stop in his unmarked vehicle.

Rather, the more apt question is whether the Commonwealth established that Officer Pieroway was unable to abide by his normal practice of calling for a marked police unit to make the stop of Mr. Arias in Jamaica Plain on March 27. On this point, the Commonwealth’s evidence at the hearing was almost nonexistent. As the Commonwealth acknowledges (C.Br.16), when asked directly on cross-examination what prevented him from requesting a marked unit to make the stop, Officer Pieroway only responded, “safety” (T4/88), without further explanation. As Mr. Arias explained in his principal brief (D.Br.23-24), there was no evidence establishing why it would have been unsafe to call for a marked unit to initiate the stop, or why doing so would have been less safe than leaving the traffic violation unresolved. The Commonwealth, which had the burden at the suppression hearing, did not sufficiently justify Officer Pieroway’s decision to forego his normal practice of calling for a marked unit to address the traffic infraction then-and-there.

Further, the Commonwealth almost completely ignores Sgt. Det. Feeney’s opportunity to address the civil infraction with Mr. Arias the

following day, March 28, when he watched Mr. Arias walk out of a house on Foster Street and enter the SUV. Instead, in a footnote, the Commonwealth relies on the possibility that Sgt. Det. Feeney was unaware of the alleged traffic infraction from the previous day. (C.Br.17,n.7). But Sgt. Det. Feeney and Officer Pieroway were two members of the same unit (the DCU at Area D-14 in Brighton), in communication over a two-day period about the same drug investigation;² both surveilled the SUV on March 27 (including Officer Pieroway’s six-mile tail); and Sgt. Det. Feeney was back at Foster Street, camped out behind the SUV on March 28. To the extent that Officer Pieroway did not alert his colleague about the March 27 traffic violation, that only underscores just how little interest police had in addressing that civil infraction at all – bolstering Mr. Arias’ claim that the pretextual governmental traffic safety interest had “lapsed” at the time of the eventual stop. See *Commonwealth v. Daveiga*, 489 Mass. 342, 354 (2022).

The Commonwealth’s brief also fails to grapple with guidance from SJC and federal precedent that the pretextual nature of a stop bears on its reasonableness. *Id.* (defendant’s interests “are particularly compelling in this case where the objective circumstances so obviously show, as both parties agree, that the actual traffic stop was a pretext”), citing *United States v. Mendonca*, 682 F.Supp.2d 98, 104 (D. Mass. 2010)

² To reiterate: pursuant to the stipulation, the Commonwealth elicited no evidence – and made no argument – that the purported drug investigation provided reasonable suspicion or probable cause to stop Mr. Arias. (T4/5-6;130-15;R2.41-42;A.26-27).

(objective circumstances showed traffic stop was obvious pretext, ending police authority to conduct it).

Instead, the Commonwealth attempts to distinguish this case from *Mendonca* because, here, “Officer Pieroway did not continue to monitor the defendant after the traffic violation with the intention or hope of observing more suspicious behavior before executing a stop.” (C.Br.16-17). But the record does not establish this as a fact. Rather, it is entirely possible that Officer Pieroway’s motivation for delaying the stop of Mr. Arias *was* to acquire more information in support of the otherwise-not-yet-actionable drug investigation. Indeed, why else would Sgt. Det. Feeney have been back at Foster Street on March 28 to resume surveillance of the SUV? If the Commonwealth’s point is that police did not materially benefit from the delay in addressing the March 27 traffic infraction, that argument also fails. Had the government *truly* had an interest in addressing the March 27 infraction, Sgt. Det. Feeney would have been aware of it on March 28, and would have walked up to Mr. Arias on Foster Street, and handed him a civil citation to address the purportedly unsafe driving behavior before Mr. Arias got back behind the wheel of a car. Of course, then the officers would have been unable to misuse another motor vehicle law (failure to stop) as a pretext to pull Mr. Arias out of the vehicle, search him, and search the vehicle. In any event, this digression is largely beside the point: Mr. Arias had no burden to establish precisely *why* police believed that delaying the pretextual stop was going to be advantageous to their drug investigation. The point is that the stop of Mr. Arias *was pretextual* and, under *Daveiga* and

Mendonca, that rendered the delay in addressing the traffic infraction even more unreasonable.

The unreasonable police delay in addressing the alleged traffic violation requires reversal.

B. The Commonwealth does not acknowledge now-Chief Justice Budd's *Long* concurrence regarding the unsettled nature of the propriety of pretextual stops under art. 14 – nor does it convincingly explain why use of the traffic laws for ulterior, investigatory purposes is constitutional.

The Commonwealth, citing *Commonwealth v. Buckley*, 478 Mass. 861 (2018) and *Commonwealth v. Santana*, 420 Mass. 205 (1995), asserts that the validity of pretextual stops under art. 14 is a fully and completely resolved issue. It characterizes Mr. Arias' position – i.e., that questions remain about the legality of pretextual stops under art. 14 – as “misleading.”³ (C.Br.19). But the Commonwealth does not acknowledge that Mr. Arias' position has a well-founded basis: it is grounded in the post-*Buckley*, post-*Santana* concurrence authored by our SJC's current Chief Justice. *Commonwealth v. Long*, 485 Mass. 711, 736-757 (2020) (Budd, J., concurring).

Disregarding Justice Budd's *Long* concurrence is a mistake – not just because she persuasively argues that pretextual stops violate art. 14,

³ After asserting that Mr. Arias' position on pretextual stops is “misleading,” the Commonwealth cites *Long*, 485 Mass. at 726 for the proposition that equal protection is the proper constitutional doctrine for challenging *discriminatory* stops. (C.Br.19). While the concepts are related, they are not synonymous: a stop may be pretextual but not racially motivated.

but also because she explains that the legal issue is unsettled. Justice Budd wrote: “there is no case of which I am aware that specifically has considered whether using pretext to make an investigatory stop without reasonable suspicion of the crime sought to be investigated is a violation of art. 14, and if not, why not.” *Id.* at 749. With an explicit finding of pretext, this case provides a proper record to fully consider this issue.

On the merits, the Commonwealth spends little time explaining why pretextual stops – the use of the traffic laws for ulterior, investigatory purposes unsupported by reasonable suspicion or probable cause – are constitutionally appropriate. Instead, the Commonwealth focuses on the notion that a ban on pretextual stops would be “unworkable,” citing apprehension from the *Buckley* Court about whether judges possess the “ability” to discern which stops are pretextual. C.Br.20-21, citing *Buckley*, 478 Mass. 861. In other words – the argument goes – making a judicial finding that a stop is pretextual is simply too difficult.

But the instant case puts those concerns to rest. Here, Judge Krupp’s finding that the stop was pretextual – which the Commonwealth challenged neither below, nor on appeal – was well-supported by the evidence: Officer Pieroway specifically directed other officers, over the radio, to stop the SUV “for a drug investigation”; and, even prior to patfrisking Mr. Arias, a drug-sniffing dog was called to the scene. (R2.43-44;A.28-29). As this case illustrates, judges *can* fether out which stops are pretextual. See also *Daveiga*, 489 Mass. at 345 (motion judge noting that the case “tests the limits of what are known as ‘pretext’ car stops”).

Finally, contrary to the Commonwealth's claim, an art. 14 ban on pretextual stops would not discourage police from the legitimate police business of addressing traffic infractions⁴ and conducting stops based on reasonable suspicion of criminal activity. What a ban on pretextual stops *would do* is discourage police from *exploiting* or *misusing* the traffic laws as a workaround in situations where they *lack* reasonable suspicion – as was the case here.

For the reasons articulated in Mr. Arias' principal brief, the stop of Mr. Arias should be invalidated, based on its pretextual nature, under art. 14.

II. The Commonwealth failed to establish that the officers' post-stop actions – including removing Mr. Arias from the SUV and patfrisking him – were justified based on his purported failure to stop for police.

A. The Commonwealth failed to establish probable cause that Mr. Arias committed the crime of failure to stop for police.

In the Commonwealth's view, Mr. Arias' driving – travelling slowly for a block and attempting to turn left – was so egregious that it amounted to *criminal* conduct, violating G.L. c. 90, § 25. (C.Br.23-24).

In support, the Commonwealth cites *Commonwealth v. Coleman*, 64 Mass. App. Ct. 558, 562 (2005) for the proposition that a “driver's recourse is not through flight with its attendant risks to others.”

⁴ The Commonwealth's note that a police officer “may face liability for failing to address a public safety hazard created by a driver” (C.Br.22), is ironic, here, where police unreasonably delayed addressing a traffic violation for an entire day, and then used it as a pretext to stop Mr. Arias for an unrelated drug investigation.

(C.Br.23). But *Coleman*'s facts are inapposite: there, on a "busy four-lane highway," the defendant took police on a chase spanning "several miles," which included the defendant crossing a fifty-foot-wide grassy median strip and entering traffic in the opposite direction. *Id.* at 560. Here, Mr. Arias did not flee; in fact, he travelled "slowly," "under the speed limit," for only a block. (T4/67-68). Contrast also *Commonwealth v. Gray*, 423 Mass. 293, 294-295 (1996).

Moreover, in its brief, the Commonwealth overlooks important facts about the conditions on Market Street at the time of the stop. The Commonwealth does address the lack of any suitable space for Mr. Arias to have pulled over on the righthand side of the road. (See T4/149; motion judge, post-hearing, determining: "I can't find that there was space to the right for Mr. Arias to pull over. No one has told me that.... [W]e have every reason to believe that [Market Street] was pretty – pretty full at that time of the day"). Nor does the Commonwealth grapple with the fact that Mr. Arias would have blocked the traffic behind him, which was "heavy" (T4/117), if he had stopped in the middle of the single-laned Market Street. These circumstances, which the Commonwealth ignores, render Mr. Arias' attempt to turn left onto a side street from busy Market Street all the more reasonable.

Lastly, the Commonwealth cites to testimony that *after* officers had stopped Mr. Arias, Officer Miskell yelled out that Mr. Arias "looked like he's trying to run. Grab him." (C.Br.24, citing T4/117). The motion judge found no facts on this point and Officer Miskell did not elaborate on what gave him the impression that Mr. Arias "looked like" he was "trying to run." To be sure, Mr. Arias did not, in fact, try to run; and, as the motion

judge found, he was removed from his vehicle by police “within seconds.” (R2.44;A.29). Vague testimony about what Mr. Arias “looked like” after the stop was consummated does not support the Commonwealth claim that he committed the crime of failure to stop. See *Commonwealth v. Garner*, 490 Mass. 90, 96 (2022) (rejecting the Commonwealth’s invitation to rely on the troopers’ testimony that the defendant was in “fight or flight mode” because, “[g]iven the stark difference between the Commonwealth’s version of the encounter and the judge’s own findings, the facts the Commonwealth seeks to add plainly are not ‘uncontroverted and undisputed’” [citation omitted]).

Because there was no probable cause that Mr. Arias committed the crime of failure to stop, the officers’ post-stop actions were unjustified.

B. The Commonwealth’s response to Mr. Arias’ void-for-vagueness challenge to § 25 only underscores the statute’s lack of definiteness.

Mr. Arias has challenged the failure to stop statute, G.L. c. 90, § 25 – which criminalizes drivers who “refuse or neglect to stop when signalled to stop by any police officer” – on vagueness grounds. The Commonwealth’s response is unavailing.

The Commonwealth argues that § 25 “carries ‘certainty and definiteness’ such that a person of ordinary intelligence would be able to ascertain whether his or her conduct would fall under the scope of the statute.” (C.Br.26). Yet its own analysis casts doubt on this contention. For instance, the Commonwealth baldly asserts that “[u]nder certain circumstances, an almost immediate stop may be required under [§ 25].” (C.Br.26). But this standard is not derived from the plain text of § 25:

the statute does not reference “certain circumstances” in which an “immediate stop” is required. To the contrary, § 25 begs the question of what circumstances – vis-à-vis the police officer’s actions, the driver’s conduct and mental state, and the roadway conditions – require an “immediate stop” to avoid breaking the law.

Similarly, the Commonwealth asserts that a person of ordinary intelligence can “ascertain that, when a marked vehicle with lights and sirens activated is traveling behind them, they must pull over as soon as safely possible.” (C.Br.26-27). But, again, such language is absent from this statute: § 25 contains no provision regarding “pull[ing] over as soon as safely possible” – or other criteria delineating what is, and is not, prohibited. The Commonwealth is reflexively generating its own normative standards to read into the statute because the plain text of § 25 is not sufficiently clear as to what conduct is being criminalized.

Further, the Commonwealth does not explain why § 25 is sufficiently definite to stave off arbitrary police enforcement. See *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Considering the already broad police discretion associated with traffic stops, and the criminal nature of the failure to stop statute, this Court should not ignore the real-life consequences implicated by § 25’s vagueness. See D.Br.37-38.

C. The Commonwealth’s response to Mr. Arias’ claim that his arrest was unreasonable appears to hinge on whether Mr. Arias “breached the peace”; he did not, and the arrest was otherwise unreasonable under art. 14.

Below, Mr. Arias challenged the constitutionality of the officers’ post-stop actions. At the suppression hearing, the Commonwealth

argued that those post-stop actions were justified because officers had probable cause to arrest him for failure to stop for police, under G.L. c. 90, § 25. (T4/135-137;R1.155-156). The motion judge agreed, and relied on G.L. c. 90, § 21's *per se* authorization for police to arrest a motorist for failure to stop. (R2.47;A.32). Mr. Arias argues that this reliance was erroneous and that, notwithstanding G.L. c. 90, § 21, the arrest of Mr. Arias' arrest was unreasonable, violating art. 14. (D.Br.38-43). In particular, Mr. Arias implores this Court to follow the many other states that have rejected *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001) on state constitutional grounds.

The Commonwealth's response is not entirely clear. The Commonwealth does not appear to rely on § 21's *per se* authorization for police to arrest for failure to stop as justification for the officers' post-stop actions. Nor does the Commonwealth explicitly urge this Court to follow *Atwater's* holding in its art. 14 interpretation. Instead, the Commonwealth takes the position that an arrest was justified because Mr. Arias committed a "breach of the peace." (C.Br.28-29).

The Commonwealth's position is, seemingly, an implicit rejection of *Atwater*. Whereas *Atwater* held that the federal constitution does not require Courts to "balance the interests and circumstances involved in particular situations" if police have probable cause to arrest, even for fine-only offenses, *Atwater*, 532 U.S. at 321-322, here, the Commonwealth *is* suggesting that the Court evaluate the particulars of Mr. Arias' arrest – through the lens of whether he "breached the peace."

Thus, both parties agree that an assessment of whether Mr. Arias “breached the peace” bears on the appropriateness of the officers’ post-stop actions. In Mr. Arias’ view, the “breach of peace” analysis is relevant because “[t]he breach of the peace requirement for a misdemeanor arrest ... has become firmly embedded in the common law of Massachusetts,” *Lunn v. Commonwealth*, 477 Mass. 517, 529 (2017), and Courts “often look[] to the common law in evaluating the reasonableness,” for constitutional purposes, of police activity. *Atwater*, 532 U.S. at 361 (O’Conner, J., dissenting). In other words, whether Mr. Arias breached the peace informs – though is not dispositive of⁵ – the question of whether arresting him for failure to stop was reasonable under art. 14.

Having arrived at the same question – albeit via different paths – this Court should determine that Mr. Arias’ conduct was not a “breach of the peace.” See *Lunn*, 477 Mass. at 530 (defining “breach of peace” as “an act that causes a public disturbance or endangers public safety in some way”).

Mr. Arias’ driving is inapposite to the facts of the cases cited by the Commonwealth. After leaving a bar, the defendant in *Jewett* committed three marked lanes violations, and, while being followed for a half mile by officers who had lights and sirens activated, continued driving “erratically,” nearly striking a parked vehicle. *Commonwealth v. Jewett*, 471 Mass. 624, 625-626 (2015). Contrast also *Commonwealth v. Cavanaugh*, 366 Mass. 277, 278 (1974) (“breach of peace” where driver

⁵ Presumably, there could be a misdemeanor arrest involving a “breach of the peace” that was nevertheless unreasonable under art. 14.

“accelerated and a high-speed chase through city streets,” spanning two and a half miles, ensued); *Commonwealth v. Mullins*, 31 Mass. App. Ct. 954, 954 (1991) (discussed at D.Br.43).

Here, after Mr. Arias proceeded at a low speed for one block and sought to make a left-hand turn, he was stopped by police. Mr. Arias’ driving did not “cause[] a public disturbance” or “endanger[] public safety.” *Lunn*, 477 Mass. at 530. To the extent there was any disruption to the public, it did not exceed that inherent in police officers making a traffic stop on a busy city road – likely exacerbated here by the officers’ aggressive approach (which almost certainly resulted from the fact that this was a pretextual stop executed for officers’ ulterior “drug investigation” purposes). Mr. Arias’ did not “breach the peace.”

Nor was an arrest for failure to stop otherwise reasonable under art. 14. As argued in his principal brief, the governmental interest was negligible (the prosecutor described the purported failure to stop as “a very small incident” (T4/135)); yet Mr. Arias’ liberty interests, occasioned by a formal arrest, were high. (D.Br.43-44).

Because arresting Mr. Arias for failure to stop was unreasonable under art. 14, the officers’ post-stop actions cannot be justified, and the suppression order should be reversed.

D. The Commonwealth’s brief fails to respond to the important, novel question of whether pretextual arrests are unlawful under art. 14.

In Section 2D of his principal brief, Mr. Arias argues that the post-stop police actions also violated art. 14 because his *arrest* was pretextual, citing other states that have banned pretextual arrests under their state

constitutions. (D.Br.44-47). In its brief, the Commonwealth did not respond to this novel and important issue. Based on the compelling, un rebutted arguments raised in Mr. Arias’ brief, this Court should also determine that the *arrest* of Mr. Arias was pretextual, and thus violative of art. 14, requiring reversal.

III. The judge erred in declining to interview the juror whose letter raised the specter of juror bias based on disability – an issue well-preserved by Mr. Arias in the trial court.

1. Mr. Arias did not waive the issue below.

Mr. Arias contends that the trial judge erred in denying his request for the Court to interview a juror whose post-verdict letter suggested that bias based on disability may have infected the jury. (D.Br.47-52). The Commonwealth claims that this argument is waived. (C.Br.29).

“An objection adequately preserves the claimed error so long as counsel makes known to the court the action which he desires the court to take or his objection to the action of the court.” *Commonwealth v. McDonagh*, 480 Mass. 131, 138 (2018) (citation and internal quotations omitted). “Perfection is not the standard by which we measure the adequacy of an objection” and the objection is to be considered “in the context of the trial as a whole.” *Id.* (citation and internal quotations omitted).

Mr. Arias’ preservation of this issue was more than adequate. Defense counsel received the juror’s letter roughly three hours after the jury returned its verdict. (R2.136). The very next day, March 15, 2024, based on the letter, Mr. Arias filed a “motion to vacate verdict and declare

mistrial,” which was supported by legal memoranda filed on March 25, 2024, and March 29, 2024. (R1.31;R2.154-156,162-164). In these memoranda, Mr. Arias requested, as an alternative to a mistrial, that the Court conduct an interview of the juror who authored the letter. (See R2.155-156: “In the alternative, the Court should conduct an interview of the juror in question in order to assure itself that verdict [sic] was a lawful one”; R2.163: “At the very least, the Court should invite the juror to return to court for a *voir dire* to address her concerns”). Mr. Arias therefore expressly articulated his request to the Court: declare a mistrial or interview the juror.

Moreover, trial counsel well-articulated the concerns arising out of the juror’s letter. In the March 29 memorandum, he argued, based on the letter, that the juror’s “neurodivergent manner of expression” may have improperly “caused the other jurors to question whether she should have been seated on the jury to begin with” – treatment “akin to impermissible racial animus towards a juror, effectively excluding a juror from service due to an inalienable trait.” (R2.162-163). Acknowledging that the issue was novel, he wrote: “a juror certainly cannot be excluded from service on account of an immutable trait.” (R2.162-163). Trial counsel framed the issue similarly at the March 25, 2024 hearing on his motion, arguing orally that the contents of the juror letter went “beyond mere peer pressuring or stress,” and ventured into questioning whether this juror was competent, which “may have been stemming from this juror’s ... medical condition.” (T16/3-4). Trial counsel continued: “I think, at the very least, it is worth having the Court bring this juror in, make some inquiry.” (T16/4).

Thus, in multiple filings and at the hearing, trial counsel explained the issue (possible juror bias based on disability) and his requested court action (mistrial or juror interview), thus preserving the issue. Mr. Arias is entitled to review for structural error. *Commonwealth v. Vasquez*, 495 Mass. 279, 285 (2025).

2. The judge erred in declining to interview the juror.

The Commonwealth raises two primary issues with Mr. Arias' claim that the trial judge erred when he declined to interview the juror.

First, the Commonwealth asserts that the juror letter did not support a reasonable claim that bias based on disability infected the jury. (C.Br.32-33; arguing that Mr. Arias' argument is "entirely speculative and in no way supported by the record"). Mr. Arias has acknowledged that the juror did not *expressly* allege that improper bias infected the jury. (D.Br.49-50). But that is not the legal standard to warrant inquiry of the juror by the trial judge. It is "the *possibility* that racial or ethnic bias has infected jury deliberations" that "cannot be ignored." *Commonwealth v. Ralph R.*, 490 Mass. 770, 784 (2022) (emphasis added; citation omitted) (error for judge not to investigate foreperson's report of "discriminating comments" made during jury deliberations). Such "possibility" is established on this record. The letter reveals that this juror was pressured and chastised by other jurors and that the juror was told that they "should not have been allowed to serve on the jury." (IR.8;A36.). In the same discussion, the juror revealed that they "did not anticipate" that their disability (autism spectrum disorder) would make them "unsuited to the jury." (IR.8;A.36). This was enough to raise the

possibility that the jury dynamics here exceeded tolerable levels of pressure, and ventured into the intolerable realm of juror bias based on disability.

Second, the Commonwealth appears to take the position that a jury infected by other pernicious bias – aside from that involving race and ethnicity – would not raise constitutional and fairness concerns. (C.Br.34-35). The Commonwealth writes, “[t]he holding in *Ralph R.* is confined to such issues of racial bias.” (C.Br.34). But this is not necessarily so. In fact, the *Ralph R.* Court repeatedly uses the phrase “racial, ethnic, or *other* improper bias” in describing what type of possible juror bias requires judicial intervention. *Ralph R.*, 490 Mass. at 771, 784, 785, 786 (emphasis added). The Commonwealth has not articulated why evidence of juror bias based on mental disabilities would not raise concerns regarding the right to a fair trial by an impartial jury, as Mr. Arias suggests.

CONCLUSION

This Court should reverse the order denying Mr. Arias’ motion to suppress. In the alternative, on the juror letter issue, this Court should reverse the judgment and vacate the conviction.

Respectfully submitted,

/s/ John P. Warren

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Dated: October 1, 2025

ADDENDUM

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41

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
Criminal No. 19-479

COMMONWEALTH

vs.

JOSE LUIS ARIAS

MEMORANDUM AND ORDER
ON DEFENDANT'S MOTION TO SUPPRESS
PHYSICAL EVIDENCE AND STATEMENTS

Defendant Jose Luis Arias is charged with trafficking more than 200 grams of cocaine. The charge followed a stop of defendant's motor vehicle on March 28, 2019 and a search of his person and vehicle, which yielded the cocaine. Defendant now moves to suppress the fruits of the stop. At the evidentiary hearing, the Commonwealth called three witnesses.¹ For the following reasons, the motion is allowed as to defendant's statements, but is otherwise denied.

FINDINGS OF FACT

Based on the preponderance of the credible evidence, I find the following facts:

On March 27, 2019, Boston police officers assigned to the drug control unit at Area D-14 in Brighton ("DCU") were on patrol in plain clothes and in unmarked vehicles in Brighton. They were in communication over a dedicated police radio channel. At about 3:10 p.m., Sgt. Det. William J. Feeney observed a grey Chevrolet Equinox SUV, Mass. Reg. 886VA2 ("the SUV") parked on Foster Street in Brighton near the Rogers Playground.² The vehicle was registered to

¹ Sgt. Det. William J. Feeney, Off. Mathew Pieroway, and Det. Andrew Miskell.

² The police apparently had information about the SUV and/or defendant before Sgt. Det. Feeney's observations of the SUV on March 27, 2019, but the Commonwealth does not rely on any such information. I do not know what information the police had. Consistent with the

Ciade E. Carvajal, a 61-year old black man. Sgt. Det. Feeney observed a light-skinned Hispanic male, later identified as defendant, get into the SUV and drive away. Although Sgt. Det. Feeney saw the SUV take a left on Washington Street, he got snarled in traffic and was unable to follow the SUV much farther.

DCU Officer Mathew Pieroway was in communication with Sgt. Det. Feeney. Off. Pieroway was in plain clothes and was driving an unmarked vehicle, which coincidentally also happened to be a Chevrolet Equinox. Hearing communications from Sgt. Det. Feeney about the SUV, Off. Pieroway began surveillance of the SUV, locating it in the Oak Square area. Off. Pieroway then followed the SUV on Washington Street toward Chestnut Hill Avenue, and ultimately to the area of Center and South Streets in Jamaica Plain.

In the vicinity of Holbrook Street in Jamaica Plain, although Center Street, as it approaches South Street, allows a single lane of traffic, it has enough room to the right for a car to drive on a bike lane next to the lane of traffic. As Off. Pieroway was following the SUV on Center Street around Holbrook Street, traffic was heavy. A line of traffic was stopped at the stop sign at South Street. Off. Pieroway observed defendant pull the SUV quickly around the right side of the line of traffic, which was stopped at the South Street stop sign, pass approximately seven vehicles stopped at the intersection, fail to stop at the stop sign, and take an immediate left in front of the line of traffic.³ Because he was in an unmarked vehicle without immediate back-up, and because of his safety concerns, Off. Pieroway terminated his surveillance of the SUV.

parties' stipulation, I do not rely on the fact that the police had any information prior to Sgt. Det. Feeney's observations.

³ On March 27, 2019, the police followed the SUV for approximately six miles. Despite this lengthy surveillance, other than this traffic violation, the police did not observe any other traffic offense, evasive driving, or indication that defendant was aware he was being followed.

The next day, March 28, 2019, at about 3:15 p.m., Sgt. Det. Feeney saw defendant exit a residence on Foster Street in Brighton and enter the SUV, which was parked on Foster Street, across the street from where it had been parked the day before. Sgt. Det. Feeney began to follow the SUV, which drove on Foster Street and turned onto Washington Street. Again, Sgt. Det. Feeney got tied up in traffic, but other DCU officers continued the surveillance.

Off. Pieroway heard Sgt. Det. Feeney's radio calls. When he was in the vicinity of Chestnut Hill Avenue and Washington Street, Off. Pieroway spotted the SUV. Off. Pieroway began to follow the SUV and requested a marked police vehicle to stop the SUV. In making the request, Off. Pieroway stated on the police radio: "we're looking to stop a vehicle for drug investigation. It will be a silver Chevy Equinox, 8-8-6-Victor-Echo-2. We're at the red light here in front of the Bank of America at Market and Wash." (Emphasis added).

Off. Pieroway observed a marked unit arrive. As the SUV was traveling up Market Street, the marked vehicle was behind the SUV and Off. Pieroway was somewhat behind it in his unmarked vehicle. Off. Pieroway saw the marked unit activate its lights and sirens shortly after turning onto Market Street, just before Henshaw Street. Rather than pull over immediately on Market Street, the SUV proceeded slowly about a block, past a few businesses, to the next street on the left (Bennett Street) and attempted to take a left onto Bennett Street.

DCU Det. Andrew Miskell was also following the marked unit. After seeing the SUV fail to stop, continue to drive forward slowly, and attempt to take a left on Bennett Street, Det. Miskell pulled his vehicle slightly to the left into oncoming traffic, stopping the heavy traffic in the opposite direction. Det. Miskell's driving maneuver effectively cut off the SUV's ability to take a left onto Bennett Street because the SUV was blocked by the stopped line of traffic heading in the opposite direction.

The driver of the marked unit and a Boston police detective approached the driver of the SUV (defendant) and asked him to exit the SUV.⁴ As Det. Miskell stated, “he [defendant] was exited from the vehicle” within seconds. There was no request for defendant’s license or registration. The officers moved defendant from the middle of Market Street to the sidewalk on the Bennett Street side of Market Street.

Meanwhile, Det. Miskell pulled his vehicle onto Bennett Street and parked. He walked back to where defendant was being held and identified himself as a DCU detective. Det. Miskell did not tell defendant that he was under arrest. Det. Miskell then pat frisked defendant, locating a hard object in defendant’s pocket. When asked, defendant said that the object was cocaine. Det. Miskell then put defendant in handcuffs and read certain warnings prescribed by Miranda v. Arizona, 384 U.S. 436 (1966), from a preprinted card. I do not know what was on the card or what Det. Miskell read. Defendant was not asked to sign a form stating that he understood the Miranda warnings. Rather, defendant verbally acknowledged he understood the warnings that were read. After giving defendant these warnings, Det. Miskell posed some questions to defendant, who answered them and directed the police to additional drugs in the SUV.

The traffic infraction on March 27, 2019 was a pretext for the motor vehicle stop on March 28, 2019. As is evident from the transcript of Off. Pieroway’s radio call for a marked unit to stop the SUV, the real reason for the stop on March 28 was to allow the DCU officers to pursue a drug investigation related to defendant and/or the SUV.⁵

⁴ Neither the driver of the marked unit nor the detective testified at the hearing.

⁵ According to the transcript of the relevant turret tape recordings, Off. Pieroway called for the marked unit to stop the SUV at 3:27 p.m. The marked unit stopped the SUV within three minutes and Off. Pieroway immediately requested that a drug-sniffing dog be sent to the location of the stop in the vicinity of 354 Market Street. The dispatcher called for the drug dog just before 3:31 p.m. At approximately 3:33 p.m., after pat frisking defendant, Off. Pieroway told

Defendant now challenges the fruits of the stop, including any statements he made.

DISCUSSION

I. The Stop and Search

A police officer may stop a motor vehicle if the officer observes the vehicle violate a traffic law. Commonwealth v. Santana, 420 Mass. 205, 207 (1995) (police authorized to stop vehicle for broken taillight); Commonwealth v. Bacon, 381 Mass. 642, 644 (1980). Regardless of the police officer's motive for the stop,⁶ the stop is lawful if the officer has reasonable suspicion that the driver committed a traffic violation. Commonwealth v. Avellar, 70 Mass. App. Ct. 608, 613 (2007).

The police had a lawful basis to stop defendant on March 28, 2019 for the traffic violation that Off. Pieroway observed the previous day. By the time of the stop, Off. Pieroway had seen defendant travel in an unauthorized lane on Center Street, fail to stop for a stop sign, and cut off a line of stopped traffic as he took a left turn from a right lane. In addition, the police had observed that the driver of the SUV on March 28, 2019 was the same person who committed the traffic violation on March 27, 2019. The information about the observed traffic violation from the previous day was not so stale that the police could not act on it.

Defendant cites no authority for his argument that a motor vehicle stop may not be based on a traffic violation witnessed the previous day. I have been unable to locate any reported cases in Massachusetts on the issue one way or the other. It bears noting, however, that the Supreme

the police dispatcher to cancel the drug dog and that they would need a tow truck (for the SUV) at their location.

⁶ See Commonwealth v. Buckley, 478 Mass. 861, 873 (2018) (“Outside of the racial profiling context – as this case is – the reasonableness of a traffic stop does not depend upon the particular motivations underlying the stop. . . . [L]egal justification alone, such as an observed traffic violation, is sufficient.”). Compare also Commonwealth v. Long, 485 Mass. 711, 727 (2020) (same), with Long, 485 Mass. at 737-748 (Budd, J., concurring).

Judicial Court has recognized the “governmental interest” in enforcement of the Commonwealth’s traffic laws to be “significant” and “clear and compelling.” Commonwealth v. Rodriguez, 472 Mass. 767, 776-777 (2015).

In the circumstances of this case, the decision not to call for back-up and try to stop the SUV for the traffic violation on March 27, 2019, was reasonable. The police also acted reasonably thereafter, undertaking to stop the SUV’s operator at their next available opportunity, which was the next day when the same operator was seen to be driving the SUV. Such delay was reasonable. See also, e.g., United States v. Zuniga, 860 F.3d 276, 282-283 (5th Cir. 2017) (“We make no attempt to articulate a *specific* time limitation to which officers must adhere in effecting a stop following a traffic violation. . . . [W]e hold only that the elapsed time between an observed violation and any subsequent stop must be reasonable upon consideration of the totality of the circumstances.”) (emphasis in original); Hairston v. Commonwealth, 67 Va. App. 552, 564-566, 797 S.E.2d 794, 800-801 (Va. Ct. App. 2017) (“the fact that a period of time passed after [the] Detective [] saw the appellant commit the reckless driving offense and before she seized him for further investigation or arrest does not defeat the existence of probable cause”) (and cases cited).

While the police had a lawful basis to stop the SUV on March 28, 2019, based on the traffic violation observed the day before, these observations were only sufficient to justify the stop of the SUV. Without more, the police only had enough information to stop the SUV and give the driver a citation for the traffic violation. The police did not have sufficient information from their observations on March 27 and March 28 either to justify an exit order based on a reasonable belief that officer safety, or the safety of others, was in danger, Commonwealth v. Gonsalves, 429 Mass. 658, 661, 663-664 (1999), or to justify a pat frisk based on a reasonable

belief that defendant was armed and dangerous. Commonwealth v. Torres-Pagan, 484 Mass. 34, 36 (2020), citing Arizona v. Johnson, 555 U.S. 323, 326–27 (2009).

But here there was more. A person operating a motor vehicle must stop and provide identification when signaled by a police officer who exercises rightful authority. See G.L. c. 90, § 25 (“Any person who, while operating or in charge of a motor vehicle, . . . shall refuse or neglect to stop when signaled to stop by any police officer who is in uniform or who displays his badge conspicuously on the outside of his outer coat or garment, . . . shall be punished”); Commonwealth v. Gray, 423 Mass. 293, 296 (1996) (driver’s failure to stop for “a person with authority” gave detective authority to arrest driver). By activating its blue lights and sirens, the marked police vehicle put the SUV’s driver on notice that he was required to stop. See Commonwealth v. Ross, 73 Mass. App. Ct. 181, 184 (2008). As every driver knows, defendant was required to stop promptly when the police acted under a show of lawful authority to pull over the SUV. G.L. c. 90, § 25. When the SUV failed to pull over, but continued to drive forward slowly, and attempted to turn onto Bennett Street, the police had probable cause to stop the SUV and arrest the driver. See G.L. c. 90, § 21 (“Any officer . . . may arrest without a warrant . . . any person who . . . violates” G.L. c. 90, § 25). Although the police did not cite defendant for failure to stop, defendant’s failure to stop allowed the police to stop and arrest him, and then to search him incident to arrest.⁷

⁷ Defendant cites Commonwealth v. Brantley, 90 Mass. App. Ct. 901, 902 (2016) (rescript), as supporting the notion that a driver may be arrested for failing to stop after a show of lawful authority, but attempts to distinguish the facts in Brantley from the facts in this case. Defendant’s argument is based on the incorrect assumption that Brantley sets a floor for what constitutes an arrestable offense for failure to stop. It does not. Instead, Brantley provides an example of probable cause to believe a driver has committed the offense of failing to stop. Id. at 902 (“defendant’s operation of the vehicle, backward toward the officer after being stopped, established probable cause to support arrest for” failure to stop). In contrast, in this case, after the marked police vehicle activated its lights and sirens, defendant continued to drive his SUV away

II. Defendant's Statements

The police may not question a person who is in custody unless the person knowingly and intelligently waives his Fifth Amendment rights protected through the prophylactic mechanism of Miranda warnings. To safeguard a defendant's right to remain silent, "prior to custodial interrogation, a suspect must 'be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.'" Commonwealth v. Simon, 456 Mass. 280, 286 (2010), quoting Miranda, 384 U.S. at 444; Commonwealth v. Martin, 444 Mass. 213, 218 (2005). The Commonwealth bears the burden to demonstrate that a defendant "waive[d] the privilege against self-incrimination [] willingly, knowingly, and intelligently." Simon, 456 Mass. at 287.

The first question in this context is whether defendant was in custody at the time of the statements. "Whether a person is in custody depends of four factors: '(1) the place of the interrogation; (2) whether the officers have conveyed to the person being questioned any belief or opinion that that person is a suspect; (3) the nature of the interrogation, including whether the interview was aggressive or, instead, informal and influenced in its contours by the person being interviewed; and (4) whether, at the time the incrimination statement was made, the person was free to end the interview by leaving the locus of the interrogation or by asking the interrogator to leave, as evidenced by whether the interview terminated with an arrest.'" Id., quoting Commonwealth v. Groome, 435 Mass. 201, 211-212 (2001). "The crucial question is whether, considering all the circumstances, a reasonable person in the defendant's position would have believed that he was in custody." Groome, 435 Mass. at 211.

from the police without stopping, and attempted to cross a line of oncoming traffic to turn onto a perpendicular street. Such behavior established probable cause to believe defendant was committing the offense of failing to stop.

With respect to defendant's statements, Det. Miskell first asked defendant about the object he felt during the pat frisk. The question to defendant followed a substantial show of police force, with multiple units responding, the police removing defendant from his vehicle within seconds, and a pat frisk of defendant by a DCU officer. At the time, defendant was in custody for failing to stop and, although the police did not tell defendant that he was under arrest, a reasonable person in defendant's position would have believed he was in custody. Moreover, the question posed to defendant was posed after Det. Miskell felt the hard object in defendant's pocket. Det. Miskell's question was posed prior to any Miranda warnings being given. As such, defendant's statement must be suppressed.

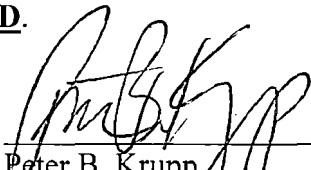
Defendant's other statements on the street were made in response to police questioning after defendant was told he was under arrest and handcuffed. Full and complete Miranda warnings were required. The Commonwealth bears the burden of demonstrating defendant's knowing and intelligent waiver of his Fifth Amendment rights. Where the Commonwealth has failed to prove in any detail what rights were read to defendant, it has failed to shoulder its burden.

Although defendant's statements must be suppressed, the additional evidence found during the search of the SUV, which was found more easily due to defendant's statements at the scene, will not be. Having arrested defendant for possession of drugs on his person, the SUV was going to be towed and would have been subject to an inventory search, at a minimum. Moreover, it was clear from Det. Miskell's questions that the police were planning to search the SUV for additional evidence of drug distribution and would have been able to secure a search warrant to do so. The contents of the SUV would inevitably have been discovered as a result. See, e.g., Commonwealth v. Ubilez, 88 Mass. App. Ct. 814, 817-820 (2016).

ORDER

Defendant's Motion to Suppress Physical Evidence and Statements (Docket #17) is **ALLOWED** only insofar as defendant's statements to Det. Miskell at the time of his stop and arrest shall be suppressed. The motion is otherwise **DENIED**.

Dated: June 17, 2021



Peter B. Krupp
Justice of the Superior Court

Dear Ms. Hennigan,

The below message is addressed to Judge Budreau, and I sincerely hope it makes it to his desk as well as to all relevant parties. Please reply with confirmation before the date of Mr. Arias' sentencing that my message has been received and distributed as appropriate, or that I need to reach out through other avenues to be heard. I can be reached at [REDACTED] or by e-mail at [REDACTED]. I will be sending a physical copy of this message to your office, but if I am able to find an e-mail address I believe will reach you, I will send this same message electronically.

RECEIVED
SUFFOLK SUPERIOR
CRIMINAL COURT
2024 MAR 18 AM 9:21

Dear Judge Budreau,

I was a juror in the case of the commonwealth against Jose Arias, in your court room from March 12th-14th, 2024. I believe justice has not been done here, as for two days in court was repeatedly told by fellow jurors that I was being unreasonable, far-fetched, and unfairly biased against law enforcement. I do not believe I was any of those things, but I have an autism spectrum disorder which can make me appear overly emotional. I did not anticipate that my autism would make me unsuited to the jury - if anything, I thought it would be a benefit. That said, being yelled at for 2 days that there was evidence presented that spoke to the accused party's guilt was not something I was strong enough to withstand, and I will regret it for the rest of my life.

I came into the second day of deliberation confident that the commonwealth had not met its burden of proof on the grounds that I saw no direct evidence of any traffic stop, apart from the testimony given. I was told that my bias and unwillingness to trust law enforcement officers was a problem and that I should not have been allowed to serve on a jury, which in hindsight is ridiculous, as I am not distrustful of law enforcement officers in general. Hindsight is always 20/20, but as we agreed to the verdict today, I felt overwhelmed by grief because I did not feel sure that any of the charges alleged against the defendant were true. I am sure this doesn't hold much weight at this time in light of the legal verdict that was given, but I cannot allow sentencing to move forward without expressing that I was persuaded to set aside my better judgement and good conscious by the other jurors, who repeatedly told me my reservations were unreasonable and that it was not okay for me not to trust the police officers' testimony without corroborating evidence just because I had no direct evidence that I should not trust them.

There was pressure to deliver a verdict after we stated we were unable to. I felt I was being judged and ridiculed for refusing to agree based on doubts the other jurors deemed unreasonable. They told me I was being outlandish, far-fetched, and absurd each time I argued that "probably is not enough." I would like it on the record that I was not convinced of anything at all - the commonwealth was not able to physically prove that Mr. Arias was even present at the alleged traffic stop on March 28th, 2019 - but I was not able to stand on my convictions in the face of peer pressure for an extended period. I was literally told repeatedly by multiple other jurors that my doubts constituted "imaginary doubt," which, again in hindsight, is the most extreme gaslighting I have ever heard of, let alone experienced.

Sincerely,
[REDACTED]

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**SUPERIOR COURT
CRIMINAL ACTION
NO. 1984CR00479**

COMMONWEALTH

vs.

**JOSE ARIAS
Defendant**

ORDER ON MOTION TO VACATE AND DECLARE A MISTRIAL

Defendant, Jose Arias, moves this Court to vacate his conviction and declare a mistrial after a juror sent a letter to the Court indicating that they felt pressured into changing their verdict and now regrets their decision.¹ Defendant first seeks further inquiry with the juror and then moves this Court to vacate the conviction. This Motion is DENIED for the following reasons.

DISCUSSION

This Court must adhere to the principle that “it is essential to the freedom and independence of [jury] deliberations that their discussions in the jury room should be kept secret and inviolable...” with limited exceptions. *Commonwealth v. Pytou Heang*, 458 Mass. 827, 858 (2011) quoting *Commonwealth v. Fidler*, 377 Mass. 192, 196, (1979), quoting *Woodward v. Leavitt*, 107 Mass. 453, 460 (1871). When, as in this case, the Court receives a post-verdict letter from a juror, the judge has no duty to investigate or to conduct an evidentiary hearing “unless the court finds some suggestion or showing that extraneous matters were brought

¹ This Court uses the pronouns they and their for this juror.

into the jury's deliberations,” *Id* quoting *Commonwealth v. Dixon*, 395 Mass. 149, 151 (1985), “or that a juror made a statement to another juror that reasonably demonstrates racial or ethnic bias.” *Commonwealth v. Pytou Heang*, 458 Mass. at 858. See also *Commonwealth v. McCowen*, ante 461, 494 (2010); *Commonwealth v. Semedo*, 456 Mass. 1, 22–24 (2010); Mass. G. Evid., § 606(b). “An extraneous matter may include an improper communication to a juror by a third party or improper consideration by a juror of information not in evidence.” *Id*. See also *Commonwealth v. Semedo*, *supra* at 22–23 *Commonwealth v. Fidler*, *supra* at 197.

Recognizing these limitations on the Court’s discretion for interviewing a juror post-verdict, defendant argues that a voir dire of the juror at issue is warranted because (1) the juror’s self-admitted mental health condition undermined their ability to make a reasoned and unanimous decision about defendant’s guilt; and (2) this condition is an extraneous factor that this court can consider when assessing whether the verdict or deliberations were tainted by outside forces. This court disagrees.

First, the letter received from the juror can best be summarized as a regret letter. While the juror does assert that she has mental health or personality disorder that disrupted her communications and relationships with other jurors, such tensions are not unusual between jurors when they are attempting to reach difficult decisions about a verdict regardless of the personalities involved. Furthermore, the juror’s letter does not support a finding that they was incompetent or unable to reason and reach an independent decision about defendant’s guilt. The fact that the juror felt pressured and even disparaged by the remaining jurors for failing to see the facts their way does not, without an allegation of racial or ethnic bias, warrant any further inquiry. *Commonwealth v. Pytou Heang*, 458 Mass. at 858.

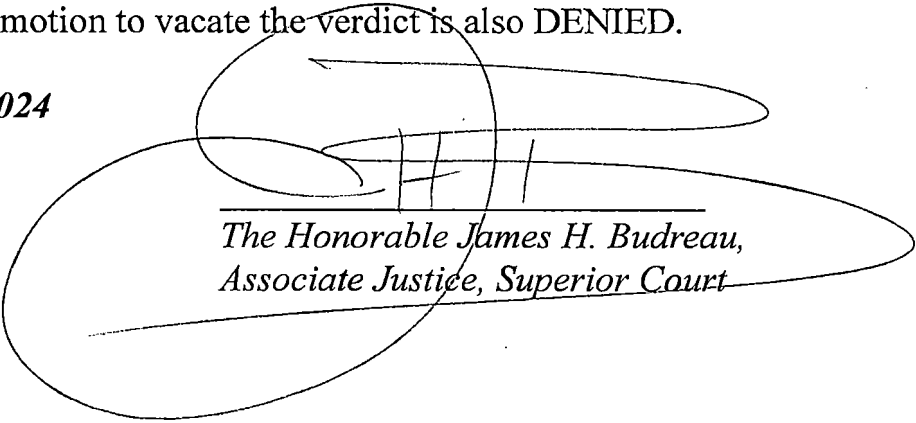
Second, this Court observed this juror during the empanelment process, the individual voir dire and trial. At no time did this Court observe any behavior or conduct that would suggest this juror was unable to perform their duty as an impartial and fair juror. Not only were both parties content with this juror after the individual voir dire, but neither party complained that this juror was inattentive or distracted during trial. Finally, the defense did not ask to poll the jury after the verdict was read and this Court made no observations of this juror that would have caused a sua sponte polling by the Court. While the juror may have regretted their decision post-verdict, that simply is not grounds for further inquiry.

Commonwealth v. Pytou Heang, supra. There is no support for the defendant's position that this juror's alleged extraneous mental health condition infringed upon, tainted or otherwise undermined the unanimity of this verdict. *Id.*²

ORDER

For the above reasons, defendant's motion for an evidentiary hearing is DENIED. Defendant's motion to vacate the verdict is also DENIED.

Dated: April 1, 2024



*The Honorable James H. Budreau,
Associate Justice, Superior Court*

² This assumes that this juror's disorder qualifies as an extraneous factor that could warrant the vacating of a verdict. While there is no case law on this issue, there are certainly circumstances where this Court could envision a severe mental health condition or personality disorder, i.e., when competency has lapsed during deliberations, might qualify for the type of extraneous factor contemplated by appellate courts for permissible inquiry to assess the validity of a verdict. This was not the case here.

UNITED STATES CONSTITUTION

FOURTH AMENDMENT

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.

SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

MASSACHUSETTS DECLARATION OF RIGHTS

ARTICLE 12

No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defense by himself, or his council at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.

ARTICLE 14

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.

Part I ADMINISTRATION OF THE GOVERNMENT

Title XIV PUBLIC WAYS AND WORKS

Chapter 90^{MOTOR VEHICLES AND AIRCRAFT}

Section 21 ARREST WITHOUT WARRANT

Section 21. Any officer authorized to make arrests may arrest without a warrant and keep in custody for not more than twenty-four hours, unless a Saturday, Sunday or a legal holiday intervenes, any person who, while operating a motor vehicle on any way, as defined in section one, violates the provisions of the first paragraph of section ten of chapter ninety. Any arrest made pursuant to this paragraph shall be deemed an arrest for the criminal offense or offenses involved and not for any civil motor vehicle infraction arising out of the same incident.

Any officer authorized to make arrests, provided such officer is in uniform or conspicuously displaying his badge of office, may arrest without a warrant and keep in custody for not more than twenty-four hours, unless Saturday, Sunday or legal holiday intervenes, any person, regardless of whether or not such person has in his possession a license to operate motor vehicles issued by the registrar, if such person upon any way or in any place to which the public has the right of access, or upon any way or in any place to which members of the public have access as invitees, operates a motor vehicle after his license or right to operate

motor vehicles in this state has been suspended or revoked by the registrar, or whoever upon any way or place to which the public has the right of access, or upon any way or in any place to which members of the public have access as invitees, or who the officer has probable cause to believe has operated or is operating a motor vehicle while under the influence of intoxicating liquor, marihuana or narcotic drugs, or depressant or stimulant substances, all as defined in section one of chapter ninety-four C, or while under the influence from smelling or inhaling the fumes of any substance having the property of releasing toxic vapors as defined in section 18 of chapter 270, carbon tetrachloride, acetone, ethylene, dichloride, toluene, chloroform, xylene or any combination thereof, or whoever uses a motor vehicle without authority knowing that such use is unauthorized, or any person who, while operating or in charge of a motor vehicle, violates the provisions of section twenty-five of chapter ninety, or whoever operates a motor vehicle upon any way or in any place to which members of the public have a right of access as invitees or licensees and without stopping and making known his name, residence and the register number of his motor vehicle goes away after knowingly colliding with or otherwise causing injury to any person, or whoever operates a motor vehicle recklessly or negligently so that the lives or safety of the public might be endangered in violation of paragraph (a) of subdivision (2) of section 24 and by such operation causes another person serious bodily injury as defined in section 24L, or whoever commits motor vehicle homicide in violation of subsection (a) or (b) of section 24G.

Any person who is arrested pursuant to this section shall, at or before the expiration of the time period prescribed, be brought before the appropriate district court and proceeded against according to the law in

criminal or juvenile cases, as the case may be, provided, however, that any violation otherwise cognizable as a civil infraction shall retain its character as, and be treated as, a civil infraction notwithstanding that the violator is arrested pursuant to this section for a criminal offense in conjunction with said civil infraction.

An investigator or examiner appointed under section twenty-nine may arrest without a warrant, keep in custody for a like period, bring before a magistrate and proceed against in like manner, any person operating a motor vehicle while under the influence of intoxicating liquor or marihuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, irrespective of his possession of a license to operate motor vehicles issued by the registrar.

Part I ADMINISTRATION OF THE GOVERNMENT

Title XIV PUBLIC WAYS AND WORKS

Chapter 90 MOTOR VEHICLES AND AIRCRAFT

Section 25 REFUSAL TO SUBMIT TO POLICE OFFICER

Section 25. Any person who, while operating or in charge of a motor vehicle, shall refuse, when requested by a police officer, to give his name and address or the name and address of the owner of such motor vehicle, or who shall give a false name or address, or who shall refuse or neglect to stop when signalled to stop by any police officer who is in uniform or who displays his badge conspicuously on the outside of his outer coat or garment, or who refuses, on demand of such officer, to produce his license to operate such vehicle or his certificate of registration, or to permit such officer to take the license or certificate in hand for the purpose of examination, or who refuses, on demand of such officer, to sign his name in the presence of such officer, and any person who on the demand of an officer of the police or other officer mentioned in section twenty-nine or authorized by the registrar, without a reasonable excuse fails to deliver his license to operate motor vehicles or the certificate of registration of any motor vehicle operated or owned by him or the

number plates furnished by the registrar for said motor vehicle, or who refuses or neglects to produce his license when requested by a court or trial justice, shall be punished by a fine of one hundred dollars.

CERTIFICATE OF SERVICE

I, John P. Warren, do certify that I served the enclosed Brief of the Appellant electronically upon the Commonwealth through the efilng system, to:

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October 1, 2025

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Mass. R. A. P. 16(a)(13); Mass. R. A. P. 16(e); Mass. R. A. P. 18; Mass. R. A. P. 20; and Mass. R. A. P. 21. The brief is printed in Century Schoolbook font consisting of 4,487 non-excluded words as tallied by the word count function of Microsoft Word.

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