

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SJC-13816

COMMONWEALTH OF MASSACHUSETTS,
Appellee,

v.

JOSE ARIAS,
Appellant

COMMONWEALTH'S CORRECTED BRIEF
ON APPEAL FROM A JUDGMENT OF
THE SUFFOLK SUPERIOR COURT

KEVIN R. HAYDEN
District Attorney
For the Suffolk District

BROOKE HARTLEY
Assistant District Attorney
For the Suffolk District
BBO# 704119
One Bulfinch Place
Boston, MA 02114
(617) 619-4344
Brooke.Hartley@mass.gov

September 24, 2025

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES.....	4
ISSUES PRESENTED.....	6
STATEMENT OF THE CASE.....	6
STATEMENT OF FACTS.....	8
I. THE MOTION TO SUPPRESS.....	8
II. THE JUROR LETTER.....	12
ARGUMENT.....	12
I. THE MOTION TO SUPPRESS WAS PROPERLY DENIED BECAUSE THE ONE DAY DELAY IN INITIATING THE TRAFFIC STOP WAS REASONABLE.....	12
A. The officers' delay in addressing the March 27 traffic infraction was reasonable because at the time of the infraction it was unsafe for officers to stop the defendant and they ceased surveilling him at that time....	13
B. This Court need not reexamine well- established law that traffic stops are legally justified regardless of the officer's underlying motive.....	19
II. THE OFFICERS' POST-STOP ACTIONS WERE JUSTIFIED BECAUSE FAILURE TO STOP IS AN ARRESTABLE OFFENSE.	22
A. There was probable cause to arrest the defendant for failure to stop where, after a marked police car activated its lights and sirens behind his vehicle, he failed to stop and attempted to make a turn but was prevented from doing so by oncoming traffic.	22

B.	The failure to stop statute is not unconstitutionally vague where the terms of the statute have a commonly understood meaning which have been clarified in practice through case law.....	25
C.	The failure to stop statute is not unconstitutional as applied to the defendant where his conduct was a violation of statute and common law.....	27
III.	THE TRIAL JUDGE PROPERLY DENIED THE DEFENDANT'S REQUEST TO INTERVIEW A JUROR WHO WROTE A POST-VERDICT LETTER INDICATING THAT SHE REGRETTED HER DECISION TO CONVICT THE DEFENDANT.....	29
CONCLUSION.....		37
ADDENDUM TABLE OF CONTENTS.....		38
ADDENDUM.....		39
CERTIFICATION.....		43
COMMONWEALTH'S CERTIFICATE OF SERVICE.....		44

TABLE OF AUTHORITIES

Cases

<i>Atwater v. City of Lago Vista</i> , 532 U.S. 318 (2021).....	26
<i>Commonwealth v. Bohmer</i> , 374 Mass. 368 (1978).....	25
<i>Commonwealth v. Brantley</i> , 90 Mass. App. Ct. 901 (2016).....	21
<i>Commonwealth v. Buckley</i> , 478 Mass. 861 (2018).....	passim
<i>Commonwealth v. Coleman</i> , 64 Mass. App. Ct. 558 (2005).....	22, 28
<i>Commonwealth v. Cruz</i> , 459 (2001).....	13
<i>Commonwealth v. Daveiga</i> , 489 Mass. 342 (2022).....	13, 17, 21
<i>Commonwealth v. Desir</i> , 2020 Mass. App. Unpub. LEXIS 860.....	24
<i>Commonwealth v. Dew</i> , 478 Mass. 304 (2017).....	29
<i>Commonwealth v. Dias</i> , 419 Mass. 698 (1995).....	29
<i>Commonwealth v. DiBenedetto</i> , 94 Mass. App. Ct. 682 (2019).....	30, 33, 35
<i>Commonwealth v. Feyenord</i> , 445 Mass. 72 (2005), cert. denied, 546 U.S. 1187 (2005).....	13
<i>Commonwealth v. Fidler</i> , 377 Mass. 192 (1979).....	35
<i>Commonwealth v. Jewett</i> , 471 Mass. 624 (2015).....	27
<i>Commonwealth v. Laguer</i> , 410 Mass. 89 (1991).....	32
<i>Commonwealth v. Lassiter</i> , 80 Mass. App. Ct. 125 (2011).....	29, 35
<i>Commonwealth v. Long</i> , 485 Mass. 711 (2020).....	18, 19, 21
<i>Commonwealth v. Lora</i> , 451 Mass. 425 (2008).....	20
<i>Commonwealth v. Martell</i> , 407 Mass. 288 (1990).....	30, 34
<i>Commonwealth v. McCalop</i> , 485 Mass. 790 (2020).....	33
<i>Commonwealth v. McCowen</i> , 458 Mass. 461 (2010).....	32
<i>Commonwealth v. Mullins</i> , 31 Mass. App. Ct. 954 (1991).....	27
<i>Commonwealth v. Orlando</i> , 371 Mass. 732 (1977).....	25
<i>Commonwealth v. Pytou Heang</i> , 458 Mass. 827 (2011). 29, 30, 34, 35	
<i>Commonwealth v. Ralph R.</i> , 490 Mass. 770 (2022).....	33

<i>Commonwealth v. Rodriguez</i> , 472 Mass. 767 (2015).....	12
<i>Commonwealth v. Ross</i> , 73 Mass. App. Ct. 181 (2008).....	22
<i>Commonwealth v. Santana</i> , 420 Mass. 205 (1995).....	12, 18
<i>Commonwealth v. Santos</i> , 95 Mass. App. Ct. 796 (2019).....	29
<i>Commonwealth v. Semedo</i> , 456 Mass. 1 (2010).....	29
<i>Commonwealth v. Torres</i> , 424 Mass. 153 (1997).....	13
<i>Graham v. Connor</i> , 490 U.S. 386 (1989).....	19
<i>Irwin v. Ware</i> , 392 Mass. 745 (1984).....	21
<i>Lunn v. Commonwealth</i> , 477 Mass. 517 (2017).....	27
<i>Robinson v. Berman</i> , 594 F.2d 1 (1 st Cir. 1979)	25
<i>Rodriguez v. United States</i> , 575 U.S. 348 (2015).....	13
<i>Scione v. Commonwealth</i> , 481 Mass. 225 (2019).....	24
<i>Terry v. Ohio</i> , 392 U.S. 1 (1968).....	19
<i>United States v. Arra</i> , 630 F.2d 836 (1 st Cir. 1980).....	20
<i>United States v. Stoppelman</i> , 406 F.2d 127 (1 st Cir.) (1969).....	30
<i>United States, v. Mendonca</i> , 682 F.Supp.2d 98 (D. Mass. 2010).....	14, 15, 16
<i>Whren v. United States</i> , 517 U.S. 806 (1996).....	18, 20

Statutes

G. L. c. 90, § 21.....	26
G. L. c. 90, § 25.....	22, 24, 25, 26
G. L. c. 90C, § 3(A) (1).....	21
G. L. c. 94C, § 32E.....	5, 7

ISSUES PRESENTED

- I. Whether the motion to suppress was properly denied where there was a reasonable one-day delay in initiating the traffic stop.
- II. Whether the officers' post-stop actions were justified where the defendant committed the arrestable offense of failure to stop.
- III. Whether the trial judge properly denied the defendant's request for the Court to interview a juror based on a post-verdict letter expressing her regret in convicting the defendant.

STATEMENT OF THE CASE

This case is before this Court on the appeal of the defendant, Jose Arias, from his conviction in the Suffolk Superior Court.

On August 15, 2019, a Suffolk County grand jury indicted the defendant on trafficking, class B (cocaine), 200 grams or more, G. L. c. 94C, § 32E(b)(4) (R.A. 14, 34)¹.

On December 17, 2019, the defendant filed a motion to suppress the fruits of a stop, including statements he made and

¹ "(R.A. __)" herein refers to volume I of the defendant's record appendix; "(R.A. II __)" refers to volume II of the defendant's record appendix; "(MTS:page)" refers to the evidentiary hearing on the motion to suppress transcript; "(I.R. __)" refers to the defendant's impounded record appendix; and "(d. br. __)" refers to the defendant's brief.

drugs recovered from his person (R.A. 15,64-68). The Commonwealth filed an opposition on August 14, 2020. (R.A. 18,151-161). The defendant filed a memorandum in support of the motion on September 10, 2020. (R.A. 18, 162-181). On January 24, 2020, he filed a motion for discovery, specifically traffic stop data related to all officers involved in the incident, which was denied three days later by Judge James Locke (R.A. 16). On April 27, 2021, Judge Peter Krupp presided over an evidentiary hearing on the defendant's motion to suppress (R.A. 19). The defendant and the Commonwealth both submitted supplemental letters to the motion judge on April 30, 2021. (R.A. 19). In a written decision issued June 17, 2021, the motion judge allowed the motion to suppress as to certain of the defendant's statements but otherwise denied the motion. (R.A. 19; 41-50).

The defendant was tried by a jury from September 12 to 15, 2023, with Judge Michael P. Doolin presiding (R.A. 24-25). The trial ended in a mistrial after the jury was deadlocked (R.A. 24-25).

A retrial by a jury took place from March 11 to 14, 2024, with Judge James Budreau presiding (R.A. 29-31). At the start of trial, the Commonwealth's motion to reduce the indictment to trafficking, class B (cocaine), 100 to 200 grams, was allowed. (R.A. 29; R.A. II 76). On March 14, 2024, the defendant was convicted of a lesser-inclusive offense: trafficking, class B

(cocaine), 18 to 36 grams, in violation of G. L. c. 94C, § 32E(b)(1) (R.A. 31).

On March 14, 2024, based on a post-verdict letter provided by a juror to the Court and defense counsel, the defendant filed a motion to vacate the verdict and declare a mistrial, and requested, alternatively, that the Court interview the juror. (R.A. II 156, 164; I.R. 3). On April 1, 2024, the trial judge denied that motion in a written decision. (R.A. II 169-171). On the same day, the defendant was sentenced to state prison for two years to two-years-and-one-day. (R.A. 32; R.A. II 161). The defendant timely appealed. (R.A. 32; R.A. II 172).

STATEMENT OF FACTS

I. THE MOTION TO SUPPRESS

At the hearing on the defendant's motion to suppress, Boston Police Department Officers William Feeney, Mathew Pieroway, and Andrew Miskell testified. The motion judge made the following findings of fact in his written decision after the hearing:

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 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 the 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

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 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

without immediate back-up, and because of his safety concerns, Off. Pieroway terminated his surveillance of the SUV.

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

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.

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

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

allow the DCU officers to pursue a drug investigation related to defendant and/or the SUV.⁵

(R.A. 41).

II. THE JUROR LETTER

Three hours after the verdict was returned, defense counsel received a letter, via email, from one of the deliberating jurors. (R.A. 6-7). The same letter was also provided to the clerk's office. (R.A. 8). In the letter, the juror stated that they have autism spectrum disorder and were pressured by other jurors into rendering the guilty verdict (I.R. 8). As stated above, the defendant moved for a mistrial, arguing that the verdict was not unanimous (R.A. II 156) or, alternatively, for the trial judge to interview the juror (R.A. II 156), both of which the trial judge denied (R.A. II 169-171; Tr. 3:24).

ARGUMENT

I. THE MOTION TO SUPPRESS WAS PROPERLY DENIED BECAUSE THE ONE DAY DELAY IN INITIATING THE TRAFFIC STOP WAS REASONABLE.

The defendant contends that the motion judge improperly denied the defendant's motion to suppress because there was a

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

one-day delay in initiating the traffic stop (d. br. 20). This argument is without merit where the delay was reasonable because the officer was unable to safely stop the defendant at the time he observed the traffic violation. Additionally, the defendant urges this Court to ignore longstanding precedent and invalidate the use of pretexts to justify investigatory stops (d. br. 26). The Supreme Judicial Court has already considered and declined to adopt this argument.

A. The officers' delay in addressing the March 27 traffic infraction was reasonable because at the time of the infraction it was unsafe for officers to stop the defendant and they ceased surveilling him at that time.

An observed traffic violation is a legal justification for a stop. See *Commonwealth v. Buckley*, 478 Mass. 861, 865-866 (2018); *Commonwealth v. Santana*, 420 Mass. 205, 207 (1995). "[T]he authority to conduct a traffic stop where a traffic violation has occurred is not limited by '[t]he fact that the [police] may have believed that the [driver was] engaging in illegal drug activity.'" *Id.*, quoting *Santana*, *supra* at 208. "'[A]llowing police to make [traffic] stops serves [the] significant government interest' of ensuring public safety on our roadways." *Buckley*, *supra* at 869, quoting *Commonwealth v. Rodriguez*, 472 Mass. 767, 776 (2015).

The observation of a traffic violation does not, however, allow an officer "bottomless authority" to seize a defendant.

Commonwealth v. Daveiga, 489 Mass. 342, 350 (2022). See *Commonwealth v. Cruz*, 459, 465-466 (2001); *Commonwealth v. Torres*, 424 Mass. 153, 158 (1997). "It goes without saying that the driver cannot be held indefinitely until all avenues of possible inquiry have been tried and exhausted." *Commonwealth v. Feyenord*, 445 Mass. 72, 80 n.9 (2005), cert. denied, 546 U.S. 1187 (2005). "[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission' – to address the traffic violation that warranted the stop and attend to related safety concerns" (citations omitted). *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). "Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose" (quotation, citation, and alteration omitted). *Id.* In *Daveiga*, 489 Mass. at 351, the Supreme Judicial Court clarified the circumstances that mark the end of a traffic stop:

If objective circumstances exist showing that the government's interest in ensuring traffic safety has ended, the individual interest prevails, and police authority to conduct a traffic stop must terminate. Two circumstances that mark the end of the government's interest in ensuring traffic safety are (1) where an officer unreasonably prolongs a traffic stop after having addressed the underlying traffic violation, and (2) when an officer observes a traffic violation but unreasonably delays initiating a traffic stop on the basis of that violation.

As the defendant correctly points out, the second *Daveiga* circumstance is relevant here because the defendant was pulled

over one day after the officer observed the traffic violation (d. br. 22). The defendant fails to acknowledge, however, that this is not the end of the inquiry. This Court must consider not just whether there was a delay in initiating the traffic stop but also whether that delay was reasonable. Here, the delay was reasonable because the officer was unable to safely stop the defendant at the time of the traffic violation and did not maintain surveillance of the defendant after the violation occurred.

The defendant relies on *United States, v. Mendonca*, 682 F.Supp.2d 98 (D. Mass. 2010), in arguing that the stop was illegal because of an unreasonable delay (d. br. 24-25). Although the delay was much shorter in *Mendonca*, this case is nonetheless distinguishable. There, local law enforcement had received information from the United States Drug Enforcement Administration that the defendant was trafficking marijuana. Based on that information, police began investigating and surveilling the defendant through GPS and physical surveillance. *Id.* at 101. While conducting surveillance at about 11 AM, officers observed the defendant commit several traffic violations. *Id.* The defendant then parked the vehicle in front of a motel and entered the motel. *Id.* Around 12:00 PM the same day, the defendant exited the motel, loaded packages into the vehicle and drove away. *Id.* At that time, police stopped him.

Id. at 101-102. The Court found that the delay was unreasonable because "the obvious rationale for the stop was to inspect what [officers] thought to be suspicious activity at the [motel]." *Id.* at 104. The Court reasoned that "a completed traffic misdemeanor cannot hang over a suspect indefinitely until a time at which he has engaged in some other suspicious activity that officers believe warrants a pretextual stop." *Id.*

The same reasoning is not applicable to this case, where Officer Mathew Pieroway was unable to safely stop the defendant at the time of the traffic violation and did not continue to monitor him immediately after the violation. Officer Pieroway observed the defendant speed across lanes, cutting off seven to eight cars, and fail to stop at a stop sign before turning (MTS 57). Officer Pieroway testified that after he observed that traffic violation, "it was unsafe for us to follow the vehicle any further" and surveillance was terminated (MTS 60-61). On appeal, the defendant questions why the officer did not call for back up to stop the defendant at the time of the traffic violation. This question was posed to the officer at the hearing and he responded that it was unsafe to stop the defendant but did not elaborate further (MTS 88).

Unlike in *Mendonca*, 682 F.Supp.2d at 104, Officer Pierway 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. The following day, around 3:15 PM, Officer Pieroway received a radio call regarding the defendant driving in the same SUV in the area of Washington and Foster Streets (MTS 62-63). Once Officer Pieroway observed the vehicle himself, he called for a marked unit stop the defendant (MTS 63-64).⁶ This was the first time since Officer Pieroway lost sight of the vehicle after the traffic violation the day before that he observed it again (MTS 60-61).⁷ Unlike in *Mendonca*, Officer Pieroway did not choose to delay the traffic stop so that he could continue surveilling the defendant. Instead, he was unable to safely stop the defendant at the time of the traffic violations and requested a marked vehicle to stop the defendant at the next available opportunity. Where there is

⁶ Officer Pieroway requested a marked unit to stop the vehicle because he was in an unmarked car without lights and sirens (MTS 63).

⁷ Around the same time, Officer Feeney observed the defendant exit a location on Foster Street and enter the same gray SUV that police had observed the previous day (MTS 17-18). Officer Feeney did not stop him at that time. It is apparent from the record the police were surveilling the defendant separate and apart from the traffic violation relevant to this case. There is nothing in the record, however, as to whether Officer Pieroway and Officer Feeney communicated regarding the traffic violation that Pieroway observed on March 27th. There is no indication that Feeney was even aware of the traffic violation. In any event, Feeney's surveillance of the defendant from 3:15 PM until when Pieroway called for back up to stop the defendant minutes later does not render Pieroway's delay in stopping the defendant unreasonable (MTS 17-18). Feeney radioed Pieroway immediately upon observing the defendant and Pieroway called for a marked car to stop the defendant immediately once he observed the defendant (MTS 17-18).

no brightline rule limiting how much time can pass between a traffic infraction and stop, the unique circumstances of this case render the one-day delay reasonable.

Daveiga, 489 Mass. at 354, is also instructive. There, the Supreme Judicial Court concluded that, at the time of the stop, the government's interest in traffic safety had already been resolved and the stop was therefore unlawful. A car was blocking the street and an officer approached the car and requested that the driver move it. *Id.* The driver complied and the police did not, at that time issue a citation, "thereby concluding the encounter and completing the 'mission' of the investigation." *Id.* Police, however, continued to observe the vehicle and then stopped it minutes later. *Id.* The driver had not committed any further traffic violations and the stop was therefore unlawful. *Id.* Significantly, the Court noted that "the traffic violation resulted from the manner in which the *Pacifica* was parked. Unlike, for example, reckless driving, any safety hazards were addressed once the driver moved the vehicle." *Id.* Here, unlike a parked car blocking traffic that had moved, the safety issue -- the defendant's erratic driving -- had not been resolved. For this reason too, a delay until police were able to once again locate the vehicle was reasonable.

B. This Court need not reexamine well-established law that traffic stops are legally justified regardless of the officer's underlying motive.

As a separate matter, the defendant asks this Court to reexamine well-established, well-reasoned law and conclude that pretextual stops violate art. 14 of the Massachusetts Declaration of Rights (d. br. 26-29). The Supreme Judicial Court has considered whether traffic violations are a legal justification for a pretextual stop on multiple occasions and repeatedly concluded that a traffic violation is *itself* a lawful basis for the police to conduct a traffic stop regardless of the officer's underlying motive. *Buckley*, 478 Mass. at 869, citing *Commonwealth v. Santana*, 420 Mass. 205 (1995).

Moreover, the defendant's claim that it is an open question as to whether pretextual stops are legal under art. 14 is misleading (d. br. 27). In *Commonwealth v. Long*, 485 Mass. 711, 726 (2020), the Court explicitly held that "the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment' to the United States Constitution or art. 14." Accord *Whren v. United States*, 517 U.S. 806, 813 (1996). The Court reasoned that the "complex and nuanced subjective inquiries are not so easily avoided" by using art. 14 to address racial profiling in traffic stops. *Long*, 458 Mass. at 727.

Inevitably, analysis under art. 14 "would slide into the subjective motivation of the officer." *Long*, 485 Mass. at 727.

Still, the defendant urges this Court to overturn longstanding precedent of evaluating the reasonableness of a stop or search on an objective basis and evaluate this case under this entirely different legal framework. The Supreme Judicial Court has already concluded such an approach is unworkable. The objective standard for assessing "reasonableness" is analytically sound. It does not require an officer, or a judge evaluating an officer's actions to pick and choose facts to conclude that the officer's subjective motivations were objectively reasonable. To apply such a test would result in inconsistent decisions with no stable basis for analysis. See *Graham v. Connor*, 490 U.S. 386, 397 (1989) ("An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional"; *Terry v. Ohio*, 392 U.S. 1, (1968) (in analyzing reasonableness of search or seizure "it is imperative that the facts be judged against an objective standard").

In *Buckley*, 478 Mass. at 867-868, the defendant asked the Supreme Judicial Court to reexamine this brightline rule. The Court arrived at the same conclusion that it had thirteen years

earlier in *Santana*: "police conduct is to be judged 'under a standard of objective reasonableness without regard to the underlying intent or motivation of the officers involved.'" *Buckley*, 478 Mass. at 867, quoting *Santana*, 420 Mass. at 208. See *Commonwealth v. Lora*, 451 Mass. 425, 436 (2008), quoting *Whren*, 517 U.S. at 813 ("Subjective intentions play no role in ordinary, probable cause Fourth Amendment analysis"). The Court also considered the evidentiary difficulties that would result from assessing police officers' subjective motives:

This would require that courts discern not only whether the police initially possessed some underlying motive that failed to align with the legal justification for their actions, but also whether the police were acting on that "improper" motive (i.e., the pretext), as opposed to the "proper" motive, when engaging in the challenged action. Both judges and legal commentators have questioned the ability of courts – venues of limited insight – to reach accurate and satisfactory answers to these questions, which may be more appropriately handled by psychologists or philosophers than lawyers.

Buckley, 478 Mass. at 861. See, e.g., *United States v. Arra*, 630 F.2d 836, 845 n.12 (1st Cir. 1980) (one "problem" with this subjective approach is "the premium it would place on dissemblance," and that "it may be little more than guesswork for a court to determine what the true motivation was").

Moreover, there is good reason to encourage, or even require police to make traffic stops. The authorization rule gives police the ability to stop a vehicle whenever they observe

a traffic violation. See *Daveiga*, 489 Mass. at 350. This is because “‘allowing police to make [traffic stops serves [the] significant government interest’ of ensuring public safety on our roadways.” *Id.*, quoting *Buckley*, 478 Mass. at 869. Indeed, “Massachusetts places the enforcement of motor vehicle laws with the police. Under G. L. c. 90C, § 3(A)(1), ‘if a police officer observes or has brought to the officer’s attention the occurrence of a civil motor vehicle infraction,’ the officer may issue a warning or citation. Indeed, in some circumstances, a police officer or his or her employer may face liability for failing to address a public safety hazard created by a driver.” *Long*, 485 Mass. at 758 (Cypher, J., concurring), citing *Irwin v. Ware*, 392 Mass. 745, 764 (1984).

II. THE OFFICERS’ POST-STOP ACTIONS WERE JUSTIFIED BECAUSE FAILURE TO STOP IS AN ARRESTABLE OFFENSE.

A. There was probable cause to arrest the defendant for failure to stop where, after a marked police car activated its lights and sirens behind his vehicle, he failed to stop and attempted to make a turn but was prevented from doing so by oncoming traffic.

“Failure to stop a vehicle when ordered to do so by a police officer is an arrestable offense.” *Commonwealth v. Brantley*, 90 Mass. App. Ct. 901, 902 (2016). See G. L. c. 90, §§ 21, 25. The relevant language in the failure to stop statute states that “[a]ny 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 by a fine of one hundred dollars." G. L. c. 90, § 25, as amended through St. 1989, c. 341, § 114 (emphasis added), quoted in *Commonwealth v. Ross*, 73 Mass. App. Ct. 181, 183 (2008). "The statutory requirement that motorists stop for police brooks no exception -- even for a driver who reasonably believes that police detention is unjustified. If there is no legitimate basis for the stop, the driver's recourse is not through flight with its attendant risks to others, but through the orderly judicial process." *Commonwealth v. Coleman*, 64 Mass. App. Ct. 558, 562 (2005).

Here, police activated lights and sirens at Market Street before Henshaw Street (MTS 65). The defendant "continued to travel at a slow rate of speed and did not immediately stop and pull to the right. The vehicle continued to the area of Bennett Street, where it attempted to take a left" but was unable to "because of the flow of traffic" (MTS 65). At that point, "other marked units conducted the stop of the vehicle. [Police] were able to approach" (MTS 65). This is sufficient to establish that the defendant failed to stop under G. L. c. 90, § 25. The defendant contends that the length of the delay -- what he calculates to be 350 feet -- is not sufficient to establish probable cause for failure to stop (d. br. 31). This argument

falls flat because not only did the defendant fail to stop for that distance of one block, but he also attempted to continue driving and turn onto another street. He stopped only when the flow of traffic prevented him from turning left (MTS 25, 68). At that point, police took the opportunity to approach his vehicle and effectuate the stop (MTS 25, 68). Officer Pieroway testified that, "[a]s [the defendant] approached Bennett Street, that's where [he] attempted to take a left, and the traffic at that point was almost at a gridlock where the vehicle was unable to take the left" (MTS 68).

Even if the defendant was initially unaware that the police car, with lights and sirens activated, was attempting to stop him, "[w]hen it became apparent the marked vehicle was behind [the defendant's vehicle], [he] attempted to make a left onto Bennett Street" (MTS 116). As the defendant attempted to make a "90-degree angle" left turn, "[a]ll of the vehicles in the oncoming lanes stopped, and he wasn't able to leave his lane of travel" (MTS 117). The defendant's failure to stop is further supported by Officer Miskell reaction to this maneuver. Once other officers successfully stopped the defendant's vehicle on foot, Officer Miskell yelled to them that "[the defendant] looked like he's trying to run. Grab him" (MTS 117). This evidence was sufficient to establish probable cause that the defendant failed to stop for police. Contrast *Commonwealth v.*

Desir, 2020 Mass. App. Unpub. LEXIS 860 *6 (no probable cause to believe that officers 'signaled [the defendant] to stop' before pulling alongside the defendant's car. . . and showing him their badges).

B. The failure to stop statute is not unconstitutionally vague where the terms of the statute have a commonly understood meaning which have been clarified in practice through case law.

The defendant contends that the failure to stop statute, G. L. c. 90, § 25, is unconstitutionally vague (d. br. 35). Specifically, he alleges that the statute (1) fails to provide motorists with sufficient notice of what conduct is criminal and (2) provides officers with far too much discretion in who to arrest (d. br. 36-37). This argument fails because the terms of the statute have a commonly understood meaning that have been clarified repeatedly through our case law.

"A statute is unconstitutionally vague when 'it lacks . . . certainty and definiteness . . . so that a [person] of ordinary intelligence [is unable] to ascertain whether any act or omission of his [or hers], as the case may be, will come within the sweep of the statute.'" *Scione v. Commonwealth*, 481 Mass. 225, 230 (2019), quoting *Commonwealth v. Slome*, 321 Mass. 713, 715 (1947). Conversely, "[a] statute whose terms have a commonly understood meaning or have been clarified by judicial explanation or by application to particular conduct is

not unconstitutionally vague." *Robinson v. Berman*, 594 F.2d 1, 2 (1st Cir. 1979).

To begin, the language of the statute here 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. It reads, in relevant part:

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 by a fine of one hundred dollars.

G. L. c. 90, § 25. The fact that the statute leaves open to discretion the amount of time that constitutes a refusal to stop does not render it unconstitutionally vague.

A law is not vague . . . if it requires a person to conform his [or her] conduct to an imprecise but comprehensible normative standard so that [people] of common intelligence will know its meaning." Uncertainty as to whether marginal offenses are included within the coverage of a statute does not render it unconstitutional if its scope is substantially clear.

Commonwealth v. Bohmer, 374 Mass. 368, 372 (1978), quoting *Commonwealth v. Orlando*, 371 Mass. 732, 734 (1977). Indeed, it would be impossible to craft a statute that accounted for all factual scenarios related to a motor vehicle stop. Under certain circumstances, an almost immediate stop may be required under the statute. 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.

As discussed *supra*, in this case, although the defendant did not continue driving for a long distance, he attempted to make a turn away from the marked vehicle and was then forced to stop due to the traffic pattern. Under G. L. c 90, §. 25, this is clearly prohibited conduct. The scope of the statute is "substantially clear" and it need not have "mathematical precision." *Bohmer*, 371 Mass. at 372.

C. The failure to stop statute is not unconstitutional as applied to the defendant where his conduct was a violation of statute and common law.

The defendant next argues that G. L. c. 90, § 21's per se authorization to arrest for failure to stop is unconstitutional as applied to the facts of this case because it is a violation of art. 14 (d. br. 39). This argument has no merit and is contrary to established United States Supreme Court precedent, and both Massachusetts common law and statute.

In *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001), the United States Supreme Court determined that, "[i]f an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." The defendant contends that this Court should reject

Atwater's holding because our state constitution provides further protections (d. br. 40). In the context of a failure to stop case, however, this is not true. Under Massachusetts common law, "an officer has authority to arrest without a warrant any person who commits a misdemeanor, provided the misdemeanor involves an actual or imminent breach of the peace, is committed in the officer's presence, and is ongoing at the time of the arrest or only interrupted by the arrest." *Lunn v. Commonwealth*, 477 Mass. 517, 529 (2017). "Breach of the peace" is defined as something that causes "a public disturbance or endangers public safety in some way." *Id.* See, e.g., *Commonwealth v. Jewett*, 471 Mass. 624, 629-630 (2015) (breach of peace occurred where defendant operated motor vehicle recklessly, including erratic driving on public streets, near-collision with parked vehicle, failure to stop, and chase through residential area); *Commonwealth v. Mullins*, 31 Mass. App. Ct. 954, 954-955 (1991) (blaring loud music "turned up to full blast" and shouting obscenities from apartment window, thereby disturbing neighbors and resulting in gathering of neighbors outside, considered breach of peace).

Here, the defendant's failure to stop for a police officer while operating a vehicle was without question a breach of peace. Someone who refuses to stop driving when requested to do so by law enforcement is evading police and putting public

safety at risk. See *Coleman*, 64 Mass. App. Ct. at 558. The same rationale that justifies allowing police to conduct traffic stops exists here – requiring drivers to stop when signaled to do so by police “serves the significant government interest of ensuring public safety on our roadways.” *Buckley*, 478 Mass. 869. Although the defendant was driving at slow rate of speed, his failure to stop forced police officers to stop traffic and approach his car on foot in the middle of a busy intersection (MTS 25). Only once stopped by the officers on foot did the defendant pull over “to allow the free flow of traffic” (MTS 25). Thus, the defendant’s failure to stop in this case not only put public safety at risk by disrupting the traffic pattern but also put police officer safety at risk by requiring them to approach his vehicle on foot on a busy roadway.

III. THE TRIAL JUDGE PROPERLY DENIED THE DEFENDANT’S REQUEST TO INTERVIEW A JUROR WHO WROTE A POST-VERDICT LETTER INDICATING THAT SHE REGRETTED HER DECISION TO CONVICT THE DEFENDANT.

The defendant claims that the trial judge erred in denying the defendant’s request to interview a juror who wrote a letter indicating her discomfort with a validly rendered verdict. For the first time on appeal, the defendant argues that the judge erred because the juror’s letter supports a “reasonable claim” that bias infected the jury deliberations (d. br. 48). After trial, the defendant moved to vacate the verdict, or

alternatively requested that the judge inquire of the juror, because the juror's letter suggested that the verdict was not unanimous (R.A. II 159). Where the defendant did not raise the issue of juror bias "before the motion judge, he has waived the argument." *Commonwealth v. Santos*, 95 Mass. App. Ct. 791, 796 (2019), quoting *Commonwealth v. Dew*, 478 Mass. 304, 309 (2017). In any event, this claim fails because the juror's letter does not suggest that the verdict was infected by bias, and inquiry into the jurors' deliberations is otherwise prohibited.

"[A] judge generally cannot inquire into, or set aside, a recorded verdict on account of a juror's post-hoc statement that he or she disagreed with the verdict." *Commonwealth v. Lassiter*, 80 Mass. App. Ct. 125, 130 (2011). "Once the juror affirms or acquiesces in the verdict as announced in open court, then 'neither [her] change of heart nor [her] subsequent disclosure of a subjective disagreement with [her] apparent vote provides a basis for vacating the verdict.'" *Id.*, quoting *Commonwealth v. Dias*, 419 Mass. 698, 703 (1995). "Tension between jurors favoring guilt and those favoring acquittal is part and parcel of the internal decision-making process of jury deliberations." *Commonwealth v. Pytou Heang*, 458 Mass. 827, 858 (2011), quoting *Commonwealth v. Semedo*, 456 Mass. 1, 23 (2010). The "fact that some jurors have weaker wills than others – or that one individual may bow to the pressure of eleven – cannot

be a cause for reopening a case." *Commonwealth v. Martell*, 407 Mass. 288, 295 (1990), quoting *United States v. Stoppelman*, 406 F.2d 127, 133 (1st Cir.) (1969).

In *Commonwealth v. DiBenedetto*, 94 Mass. App. Ct. 682, 685 (2019), this Court reaffirmed that "[i]mpeaching a duly recorded verdict by subsequent inquiry into the jurors' deliberations has long been prohibited." The Court was clear that there are only two exceptions to this rule, neither of which are implicated in this case. The first relates to whether there was an extraneous influence on the verdict, "such as unauthorized site visits, improper communications with third parties, or consideration of facts not in evidence." *Id.* at 686. The second is whether a verdict was "infected by racial or ethnic bias, even though such questioning straddles the line between the jurors' subjective mental processes and extraneous influences." *Id.* at 686-687. "We decline to start down this slippery slope, lest the exceptions swallow the rule." *Id.* at 687. "A judge receiving a postverdict letter or affidavit from a juror has no duty to investigate or to conduct an evidentiary hearing unless the court finds some suggestion or showing that extraneous matters were brought into the jury's deliberations or that a juror made a statement to another juror that reasonably demonstrates racial or ethnic bias". *Pytou Heang*, 827 Mass. at 858 (citation and quotations omitted).

Here, the juror's letter presents no evidence that extraneous matters were brought into the jury's deliberations and no claim of racial or ethnic bias, rather it expressed her regret with a validly rendered verdict. The juror wrote, in relevant part:

"I 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.*

. . .

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. .*
."

(I.R. 8). The juror's letter suggests that she was peer pressured by other jurors who disagreed with her reasoning and believed that *the juror herself* had a bias against law enforcement. The letter certainly does not express a concern for racial bias amongst members of the jury. Nor does it express a concern for "bias based on disability," as the defendant alleges (d. br. 50). The defendant makes a substantive leap that, because the juror stated in the letter that their autism spectrum disorder can "make [them] appear overly emotional," there is a reasonable probability that other jurors directed "negative comments at the juror" that were

"infused with bias based on disability" (d. br. At 49-50). This is entirely speculative and in no way supported by the record.

The defendant's reliance on *Commonwealth v. McCowen*, 458 Mass. 461, 494 (2010), for the proposition that a judge "cannot ignore" the suggestion that improper bias has infected the jury deliberations (d. br. 47) is also misguided. In *McCowen*, the defendant filed affidavits alleging that several jurors made statements that reasonably demonstrated racial or ethnic bias.

The statements were as follows:

(1) that one juror (Juror X) had said that she was frightened of the defendant because he was "big" and "black" and had been trying to "intimidate" her by staring at her in the court room; (2) that another juror (Juror Y) said that bruises like those found on the victim's body would result "when a big black guy beats up on a small woman"; and (3) that a third juror (Juror Z) said that he had always been around white people and did not like black people because "look at what they are capable of."

Id. at 490-491. The judge properly conducted a hearing to determine the truth of the allegations because "the possibility raised by the affidavit[s] that the defendant did not receive a trial by an impartial jury, which was his fundamental right, cannot be ignored." *Id.*, quoting, *Commonwealth v. Laguer*, 410 Mass. 89, 97 (1991). The statements at issue in *McCowen* and the juror's letter in this case are not comparable. Simply put, in this case, there was no potential juror bias to investigate, and

any inquiry by the judge would invaded the jury's deliberative process.

Similarly, the defendant's contention, based on *Commonwealth v. Ralph R.*, 490 Mass. 770, 780 (2022), that "even the 'possibility' that improper bias infected jury deliberations 'cannot be ignored'" (d. br. 50) is misleading. *Ralph R.* stands for the proposition that "the possibility that racial or ethnic bias has infected jury deliberations 'cannot be ignored.'" *Id.*, quoting *Commonwealth v. McCalop*, 485 Mass. 790, 798-799 (2020). The holding in *Ralph R.* is confined to such issues of racial bias. This is because "to ignore concerns about the influence of racial bias in the jury room 'might well offend fundamental fairness.'" *Id.*, quoting *McCalop*, *supra* at 799. "Judges are also permitted to inquire whether a verdict was infected by racial or ethnic bias, even though such questioning straddles the line between the jurors' subjective mental processes and extraneous influences." *DiBenedetto*, 94 Mass. App. Ct. at 686. This is a limited exception that recognizes that "infection of the criminal justice system with racial or ethnic bias is a unique type of constitutional deprivation that requires a vigilant response." *Id.* at 687. The Court has declined to expand the permissible scope of judicial inquiry, "lest the exceptions swallow the rule." *Id.* It is uncontested that there is no suggestion of racial bias in the juror's letter. The

letter suggests only that the juror may have felt pressured by her fellow jurors to vote guilty. The juror's letter is a reflection of her subjective mental process in deliberating, and thus cannot be the basis for judicial inquiry or reversal of the verdict. See *Martell*, 407 Mass. at 295.

This case is analogous to *Pytou Heang*, 458 Mass. at 857. There, the Supreme Judicial Court concluded that a juror letter in which the juror complained of being pressured into convicting the defendant did not jeopardize the verdict. The juror claimed that other jurors "lean[ed] across the table into our faces and insist[ed] on yelling at us, screaming, swearing, and throwing books and pens just because we [saw] some things differently." *Pytou Heang*, 827 Mass. at 857. The juror further alleged that, "she was subjected to '8 hours of constant interrogation,' with jurors 'constantly yelling at me and swearing and pointing finger[s] in my face across the table and telling me that I am crazy.'" *Id.* The trial judge concluded that no "action should be taken because the juror's complaints in the letter did not allege an extraneous influence on the jury, did not 'rise to the level of juror misconduct,' and related to the jury's 'internal decision making process.'" *Id.* at 857. The Supreme Judicial Court agreed, reasoning that the juror's letter consisted of "evidence concerning the subjective mental processes of jurors, such as the reasons for their decisions" and did not call into

question the verdict or require any inquiry from the judge. *Id.* The same is true here, where the juror has made almost identical claims.

In sum, any further investigation is unwarranted where "we 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.'" *Pytou Heang, supra*, quoting *Commonwealth v. Fidler*, 377 Mass. 192, 196 (1979). "Once the verdict is affirmed and recorded, 'a judge is generally precluded from inquiring into alleged improprieties in the jury's deliberations or decision-making.'" *DiBenedetto*, 94 Mass. App. Ct. at 685, quoting *Lassiter*, 80 Mass. App. Ct. at 130.

CONCLUSION

For the foregoing reasons, the Commonwealth respectfully requests that this Honorable Court affirm the defendant's conviction.

Respectfully submitted
FOR THE COMMONWEALTH,

KEVIN R. HAYDEN
District Attorney
For the Suffolk District

BROOKE HARTLEY
Assistant District Attorney
For the Suffolk District
BBO# 704119
One Bulfinch Place
Boston, MA 02114
(617) 619-4344
Brooke.Hartley@mass.gov

September 22, 2025

ADDENDUM TABLE OF CONTENTS

G. L. c. 90, § 21.....	39
G. L. c. 90, § 25.....	40
G. L. c. 90C, § 3(A) (1).....	40
G. L. c. 94C, § 32E.....	40-41
<i>Commonwealth v. Desir</i> , 2020 Mass. App. Unpub. LEXIS 860.....	43-47

ADDENDUM

G. L. c. 90, § 21: Arrest without a 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.

G. L. c. 90, § 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.

G. L. c. 90C, § 3(A)(1): Issuance of citations; hearing; appeal; summons or warrant; complaint; trial; license or permit suspension

Section 3. (A) (1) If a police officer observes or has brought to the officer's attention the occurrence of a civil motor vehicle infraction, the officer may issue a written warning or may cite the violator for a civil motor vehicle infraction in accordance with this subsection. If the officer issues a citation solely for one or more civil motor vehicle infractions without any associated criminal violations, the officer shall indicate on the citation the scheduled assessment for each civil motor vehicle infraction alleged.

G. L. c. 94C, § 32E: Trafficking in marihuana, cocaine, heroin, synthetic opioids, morphine, opium, etc.; eligibility for parole

Section 32E. (a) Any person who trafficks in marihuana by knowingly or intentionally manufacturing, distributing, dispensing, or cultivating or possessing with intent to manufacture, distribute, dispense, or

cultivate, or by bringing into the commonwealth a net weight of fifty pounds or more of marihuana or a net weight of fifty pounds or more of any mixture containing marihuana shall, if the net weight of marihuana or any mixture thereof is:

(1) Fifty pounds or more, but less than one hundred pounds, be punished by a term of imprisonment in the state prison for not less than two and one-half nor more than fifteen years or by imprisonment in a jail or house of correction for not less than one nor more than two and one-half years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of one year and a fine of not less than five hundred nor more than ten thousand dollars may be imposed but not in lieu of the mandatory minimum one year term of imprisonment, as established herein.

(2) One hundred pounds or more, but less than two thousand pounds, be punished by a term of imprisonment in the state prison for not less than 2 nor more than fifteen years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 2 years and a fine of not less than two thousand and five hundred nor more than twenty-five thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(3) Two thousand pounds or more, but less than ten thousand pounds, be punished by a term of imprisonment in the state prison for not less than 3 1/2 nor more than fifteen years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 3 1/2 years and a fine of not less than five thousand nor more than fifty thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(4) Ten thousand pounds or more, be punished by a term of imprisonment in the state prison for not less than 8 nor more than fifteen years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 8 years and a fine of not less than twenty thousand nor more than two hundred thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(b) Any person who trafficks in a controlled substance defined in clause (4) of paragraph (a), clause (2) of paragraph (c) or in clause (3) of paragraph (c) of Class B of section thirty-one by knowingly or intentionally manufacturing, distributing or dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the commonwealth a net weight of 18 grams or more of a controlled substance as so defined, or a net weight of 18 grams or more of any mixture containing a controlled substance as so defined shall, if the net weight of a controlled substance as so defined, or any mixture thereof is:

(1) Eighteen grams or more but less than 36 grams, be punished by a term of imprisonment in the state prison for not less than 2 nor more than 15 years. No sentence imposed under this clause shall be for less than a minimum term of imprisonment of 2 years, and a fine of not less

\$2,500 nor more than \$25,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(2) Thirty-six grams or more, but less than 100 grams, be punished by a term of imprisonment in the state prison for not less than 3 1/2 nor more than 20 years. No sentence imposed under this clause shall be for less than a mandatory minimum term of imprisonment of 3 1/2 years, and a fine of not less than \$5,000 nor more than \$50,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(3) One hundred grams or more, but less than two hundred grams, be punished by a term of imprisonment in the state prison for not less than 8 nor more than twenty years. No sentence imposed under the provisions of this clause shall be for less than a mandatory minimum term of imprisonment of 8 years and a fine of not less than ten thousand nor more than one hundred thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(4) Two hundred grams or more, be punished by a term of imprisonment in the state prison for not less than 12 nor more than twenty years. No sentence imposed under the provisions of this clause shall be for less than a mandatory minimum term of imprisonment of 12 years and a fine of not less than fifty thousand nor more than five hundred thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

Commonwealth v. Desir

Appeals Court of Massachusetts

October 16, 2020, Entered

19-P-1030

Reporter

2020 Mass. App. Unpub. LEXIS 860 *; 98 Mass. App. Ct. 1114; 155 N.E.3d 775; 2020 WL 6114564

COMMONWEALTH VS. MALCOM DESIR.

Notice: Summary decisions issued by the Appeals Court pursuant to M.A.C. [Rule 23.0](#), as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as [rule 1:28](#), as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to [rule 23.0](#) or [rule 1:28](#) issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See [Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4, 881 N.E.2d 792 \(2008\)](#).

PUBLISHED IN TABLE FORMAT IN THE MASSACHUSETTS APPEALS COURT REPORTS.

PUBLISHED IN TABLE FORMAT IN THE NORTH EASTERN REPORTER.

Subsequent History: Appeal denied by [Commonwealth v. Desir, 486 Mass. 1111, 2021 Mass. LEXIS 67 \(Mass., Jan. 14, 2021\)](#)

Judges: Meade, Kinder & Hand, JJ. [*1]

Opinion

MEMORANDUM AND ORDER PURSUANT TO [RULE 23.0](#)

Following a jury trial in the District Court, the defendant, Malcom Desir, appeals from his convictions of carrying a firearm without a license, *G. L. c. 269, § 10 (a)*; possession of ammunition without a firearm identification (FID) card, *G. L. c. 269, § 10 (h) (1)*¹; and failure to stop for a police officer, [G. L. c. 90, § 25](#).² The judge sentenced the defendant to eighteen months in the house of correction on the first count and one year of probation, on and after the committed sentence, on the second count. On the third count, failure to stop for a police officer, the judge did not impose a sentence, and instead placed the matter on file for six months. The defendant appeals from the order denying his pretrial motion to dismiss each of the criminal charges for lack of probable cause, the trial judge's postverdict order denying his motion for a required finding of not guilty as to each of those charges, and the judgments. As we conclude that the application for complaint failed to establish probable cause for the charge of failure to stop for a police officer, that verdict must be set aside, and that count of the complaint is to be dismissed. On the two possession charges, the judgments [*2] are affirmed.

¹ The only ammunition at issue is that found in the firearm.

² The defendant was also found not responsible for a civil infraction.

1. *Motion to dismiss the complaint for lack of probable cause.* "[A] motion to dismiss a criminal complaint for lack of probable cause is decided from the four corners of the complaint application." [*Commonwealth v. Huggins*, 84 Mass. App. Ct. 107, 111, 993 N.E.2d 734 \(2013\)](#), quoting [*Commonwealth v. Bell*, 83 Mass. App. Ct. 61, 62, 981 N.E.2d 200 \(2013\)](#). "The complaint application . . . must contain sufficient evidence to establish the identity of the accused and probable cause to arrest him." [*Bell*, supra at 63](#). We review a judge's ruling on a motion to dismiss for lack of probable cause de novo. See [*Commonwealth v. Humberto H.*, 466 Mass. 562, 566, 998 N.E.2d 1003 \(2013\)](#).

The defendant argues that the facts presented in the application for complaint were insufficient to establish probable cause that he "knowingly possessed" either the firearm or the ammunition found loaded into it, see *G. L. c. 269, § 10 (a), (h)*, or that he knowingly failed to stop in response to a police officer's signal to do so. See [*G. L. c. 90, § 25*](#). Due to the fact-intensive nature of the claims before us, we reserve a comprehensive review of the evidence for our sufficiency discussion, *infra*, while in addressing probable cause we provide only those facts included in the application for complaint that are necessary for us to reach our conclusions.

a. *Illegal possession of firearm.*³ "Proof of constructive possession requires the Commonwealth to show 'knowledge [*3] coupled with the ability and intention to exercise dominion and control.'" [*Commonwealth v. Romero*, 464 Mass. 648, 653, 984 N.E.2d 853 \(2013\)](#), quoting [*Commonwealth v. Brzezinski*, 405 Mass. 401, 409, 540 N.E.2d 1325 \(1989\)](#). Evidence of the defendant's knowing possession of the pistol is similar to the evidence of possession approved in [*Commonwealth v. Jefferson*, 461 Mass. 821, 965 N.E.2d 800 \(2012\)](#). Notably, here, as in *Jefferson*, the defendant fled in his vehicle from officers approaching on foot and briefly was out of their view; retracing the defendant's route, the police found a pistol on the ground along the flight path. See [*id.* at 823-824](#). As in *Jefferson*, the gun here was found in a readily-visible location, suggesting "that it would not have remained there for long without being reported or removed," and was in a position "consistent with where it would have landed had it been thrown from the . . . window of the vehicle" while the vehicle was out of sight of the police. See [*id.* at 826](#).

As the court noted in *Jefferson*, the defendant's acceleration away from the police when they approached permitted an inference that he did so in order to give himself an opportunity to dispose of the pistol without being seen. See [*id.* at 826-827](#). His flight was also some evidence of consciousness of guilt.⁴ See [*Commonwealth v. Grayson*, 96 Mass. App. Ct. 748, 751, 139 N.E.3d 358 \(2019\)](#) (articulating proposition that flight may serve as evidence of consciousness of guilt); [*Commonwealth v. Summers*, 93 Mass. App. Ct. 260, 264, 102 N.E.3d 977 \(2018\)](#) (flight as "plus" [*4] factor" supporting inference of intent to exercise dominion and control over contraband). But cf. [*Commonwealth v. Evelyn*, 485 Mass. 691, 708, 709, 152 N.E.3d 108 \(2020\)](#), citing [*Commonwealth v. Warren*, 475 Mass. 530, 539, 540, 58 N.E.3d 333 \(2016\)](#) ("significantly discount[ing] weight" of "nervous and evasive behavior," in addition to flight from police by African-American man, as evidence of consciousness of guilt due to demonstrated "pattern of racial profiling" by Boston Police Department).

The fact that no one saw the defendant in possession of the firearm, or disposing of it, does not vitiate the probable cause determination as to possession. See generally [*Jefferson*, 461 Mass. at 826-827](#). See also [*Commonwealth v. Gouse*, 461 Mass. 787, 795, 965 N.E.2d 774 \(2012\)](#) (possession and knowledge susceptible of proof by circumstantial evidence). We are satisfied that the application for complaint demonstrated probable cause to believe that the defendant violated *G. L. c. 269, § 10 (a)*.

b. *Illegal possession of ammunition.* The charge of possession of ammunition was based on the ammunition discovered in the pistol. Accordingly, the same evidence supporting probable cause for possession of the pistol itself supports probable cause for possession of the ammunition with which it was loaded. The evidence of the

³ The defendant does not challenge that the pistol at issue was a working firearm, nor that at the time of these events, he was not licensed to carry firearms. See *G. L. c. 269, § 10 (a), (h)*.

⁴ In his reply brief, the defendant raises a new argument that he was the victim of racial profiling by the police. The issue is waived, as it was not raised in the trial court, nor in the defendant's primary brief, and so was not preserved. See, e.g., [*Commonwealth v. Hampton*, 64 Mass. App. Ct. 27, 33 n.8, 831 N.E.2d 341 \(2005\)](#) ("arguments raised for the first time in a reply brief are waived").

defendant's knowledge that the firearm was loaded, see [Commonwealth v. Johnson, 461 Mass. 44, 52, 53, 958 N.E.2d 25 \(2011\)](#) (understanding G. L. c. 269, § 10 (h), to contain implicit knowledge requirement), while circumstantial, [*5] was sufficient to support the judge's probable cause determination.⁵ See [Commonwealth v. Grandison, 433 Mass. 135, 141, 741 N.E.2d 25 \(2001\)](#). There was evidence that the defendant had the gun with him in the car and that it was "cocked," with a round in the chamber, supporting the conclusion that the defendant had the weapon in his possession and ready for immediate use. See [Grayson, 96 Mass. App. Ct. at 753 n.10](#) (indicators that firearm "was intended to be ready for immediate use and thus that it was known to be loaded" circumstantial evidence of knowledge); [Commonwealth v. Mitchell, 95 Mass. App. Ct. 406, 419, 126 N.E.3d 118 \(2019\)](#) ("It is reasonable to infer that one who brings a gun to a location knows whether or not it is loaded"). Additionally, the police report's reference to the defendant's past involvement with gun violence was evidence from which the judge could have inferred that the defendant had some familiarity with firearms. Cf. [Grayson, supra at 753](#) (evidence of defendant's familiarity with firearms relevant factor in determining whether defendant knew firearm in his possession was loaded); [Commonwealth v. Resende, 94 Mass. App. Ct. 194, 200-201, 113 N.E.3d 347 \(2018\)](#) (same).⁶ We conclude that these factors were sufficient to establish probable cause for knowing possession of the ammunition found in the pistol.

c. *Failure to stop for police.* As we noted, *supra*, although the jury convicted the defendant of failure to stop for a police [*6] officer, the judge did not sentence him on that charge; instead, the judge placed the charge on file until December 26, 2018.⁷ See [Mass. R. Crim. P. 28 \(e\)](#), 453 Mass. 1501 (2009). The charge was never removed from the file, and the defendant was never sentenced on that conviction. Under [rule 28 \(e\)](#), a judge, with both parties' consent, may "file a case after a guilty verdict . . . without imposing a sentence." "Ordinarily, we do not consider appeals from indictments placed on file," [Commonwealth v. Chappie, 397 Mass. 508, 523, 492 N.E.2d 719 \(1986\)](#), because in the absence of a sentence, the judgment is not final. See [Commonwealth v. Delgado, 367 Mass. 432, 438, 326 N.E.2d 716 \(1975\)](#). Here, however, we discern in the record valid reasons why the Commonwealth did not raise the question whether this aspect of the defendant's appeal is properly before us, and exercise our discretion to consider the appeal from the conviction, notwithstanding the fact that no sentence was imposed.⁸ The defendant argues that the police report failed to establish probable cause to believe that the defendant knew either that the undercover detectives were police officers at the time that they attempted to stop him, or that the detectives had "signaled [him] to stop." See [G. L. c. 90, § 25](#). Although the application for complaint provided probable cause to believe that the defendant knew that [*7] the detectives were police officers,⁹ we do not discern in the report probable cause to believe that the officers "signaled [the defendant] to stop" before pulling alongside the defendant's car at the intersection of Snell Avenue and Riverview Street and showing him their badges.¹⁰ Compare, e.g., [Commonwealth v. Gray, 423 Mass. 293, 295, 667 N.E.2d 1125 \(1996\)](#) (use of unmarked vehicle's strobe lights

⁵ Neither party disputes that "it was not possible to discern merely by observation whether the pistol . . . was loaded." [Grayson, 96 Mass. App. Ct. at 752](#), quoting [Commonwealth v. Brown, 479 Mass. 600, 608, 97 N.E.3d 349 \(2018\)](#).

⁶ There was also evidence of the defendant's motive for possessing a loaded gun in the report's statement that the defendant was a member of a specific gang that "had problems with" another gang, and that the defendant's home had been previously shot at.

⁷ Defense counsel acknowledged the judge's decision to file the conviction, and did not object.

⁸ On this record, it is not clear that the filing of the conviction was properly formalized. See [Mass. R. Crim. P. 28 \(e\)](#) (requiring judge to inform defendant in open court of specific consequences of filing and defendant to file written consent to filing and its terms).

⁹ The report attached to the application for complaint states that when the detectives got out of their unmarked vehicle and began walking toward the defendant's car, each of the detectives had his badge displayed "clearly." This was sufficient. Compare [Commonwealth v. Gray, 423 Mass. 293, 295, 667 N.E.2d 1125 \(1996\)](#) (insufficient notification of being told to stop by police officer where detective was in plain clothes and badge was not displayed on outside of garment).

¹⁰ According to the report, the undercover vehicle that the defendants were driving was not equipped with emergency lights; the report is silent about whether the vehicle had a siren.

and display of badge by plain-clothes detective sufficient to signal defendant to stop); [Commonwealth v. Ross, 73 Mass. App. Ct. 181, 184, 896 N.E.2d 647 \(2008\)](#) (activation of siren and lights with "repeated attempts to pull alongside the vehicle and at least one request to pull over" effective signal to stop).

On this evidence, we cannot say that the judge had probable cause to believe that the defendant failed to stop. Cf. [Gray, supra](#); [Ross, supra](#). Accordingly, as to the charge of failure to stop for a police officer, the judge should have allowed the defendant's motion to dismiss.

2. *Motions for required finding of not guilty.* At trial, the defendant moved for a required finding of not guilty at the close of the Commonwealth's case and again at the close of all of the evidence.¹¹ The motions were denied. Paralleling his challenges to the motion judge's probable cause determination, the defendant argues that there was insufficient [*8] evidence to support a finding that the defendant had knowledge or control of the firearm or ammunition that he was charged with possessing. We disagree.

In reviewing the denial of a motion for a required finding of not guilty, "we consider the evidence introduced at trial in the light most favorable to the Commonwealth, and determine whether a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." [Commonwealth v. Oberle, 476 Mass. 539, 547, 69 N.E.3d 993 \(2017\)](#), citing [Commonwealth v. Latimore, 378 Mass. 671, 676-677, 393 N.E.2d 370 \(1979\)](#). "The inferences that support a conviction 'need only be reasonable and possible; [they] need not be necessary or inescapable.'" [Commonwealth v. Waller, 90 Mass. App. Ct. 295, 303, 58 N.E.3d 1070 \(2016\)](#), quoting [Commonwealth v. Woods, 466 Mass. 707, 713, 1 N.E.3d 762 \(2014\)](#).

At approximately 9:25 A.M. Brockton Police Detectives Bell and Mercurio were conducting undercover surveillance in an unmarked truck when they noticed a grey Infiniti driven by the defendant, whom they both recognized from prior interactions. The defendant looked toward Bell and directly at Mercurio. His eyes widened in recognition, his head snapped forward, then he looked away and continued to drive. The detectives followed in the truck, watching as the defendant "rolled through" a stop sign at an intersection.

The detectives learned that the Infiniti was registered to the defendant at his home [*9] address; the defendant drove to that address and stopped there. The detectives pulled in behind the Infiniti and got out of the truck with their badges visibly displayed. Upon approaching the vehicle, Mercurio saw the defendant, using the side mirror of his car, look through the partially-open driver's side window at Mercurio's chest area, and then back up into Mercurio's eyes. Before the detectives could say anything to him, the defendant drove away, fleeing at high speed. The detectives ran back to the truck and followed the defendant's car, briefly losing sight of the defendant after he turned onto Snell Avenue before coming to a complete stop.

Bell then retraced the defendant's route on Snell Avenue. A bystander directed him to a gun lying in the open, on the sandy dirt shoulder of the road. The bystander had seen the defendant's car pass by, followed fifteen to twenty seconds later by the undercover truck. The bystander had not seen anything thrown from the defendant's car, though he walked his dog in the same area two or three hours earlier, and had not seen a gun there at that time.

The gun was a semiautomatic pistol. The ground around the gun was disturbed; in places, the top [*10] layer of soil, wet from the previous night's rain, was scraped up to reveal the dry soil beneath. Although there was wet dirt and sand on the side of the gun closest to the ground, the upward facing side of the gun was clean and dry, and there was no moisture on the magazine found in the gun. The gun was loaded, with its slide forward, "cocked" and ready to fire. Both chambering a round and cocking the gun required the user to take specific action.

a. *Illegal possession of firearm.* We agree with the trial judge that these facts are very close to those in *Jefferson*, and that for the reasons articulated in *Jefferson*, the evidence was sufficient to support the defendant's conviction of illegal possession of a firearm. See [Jefferson, 461 Mass. at 826-827](#). The circumstances under which the gun was found, with the evidence of the defendant's flight from Bell and Mercurio, whom he recognized to be police officers,

¹¹ The defendant rested without presenting any evidence.

was sufficient to prove possession of the gun. See *id.*; [Gouse, 461 Mass. at 795-796](#); [Grayson, 96 Mass. App. Ct. at 751](#); [Summers, 93 Mass. App. Ct. at 264](#). Any inconsistencies in the testimony at trial were for the jury to resolve. See [Commonwealth v. Hill, 387 Mass. 619, 624, 442 N.E.2d 24 \(1982\)](#).

b. *Illegal possession of ammunition.* The evidence of the defendant's possession of the gun was also sufficient to show his possession of the ammunition within it. As to [*11] knowledge of the ammunition, the jury heard evidence that the gun was found cocked, loaded, and with a round in the chamber, which requires the user to take affirmative action. That evidence was, while circumstantial, sufficient to satisfy the knowledge element of the offense. See [Commonwealth v. Bennett, 424 Mass. 64, 67, 674 N.E.2d 237 \(1997\)](#) (circumstantial evidence competent to establish guilt); [Commonwealth v. Gilbert, 423 Mass. 863, 868, 673 N.E.2d 46 \(1996\)](#), quoting [Commonwealth v. Beckett, 373 Mass. 329, 341, 366 N.E.2d 1252 \(1977\)](#) ("An inference drawn from circumstantial evidence 'need only be reasonable and possible; it need not be necessary or inescapable'").

Conclusion. On the charge of failure to stop for a police officer, the verdict is set aside, and that count of the complaint is to be dismissed. On the two possession charges, the judgments are affirmed.¹²

So ordered.

By the Court (Meade, Kinder & Hand, JJ.¹³),

Entered: October 16, 2020.

End of Document

¹² Based on our determination that the application for complaint failed to demonstrate probable cause to believe that the police signaled the defendant to stop before he actually did so, we need not and do not reach the question of the sufficiency of the evidence on this charge.

¹³ The panelists are listed in order of seniority.

CERTIFICATION

I hereby certify that, to the best of my knowledge, this brief complies with the rules of court that pertain to the filing of briefs, including those rules specified in Mass. R. App. P. 16(k) and Mass. R. App. P. 20(a)(2)(F). The brief is in 12-point Courier New with 10 CPI and has a length of 31 pages.

/s/ Brooke Hartley
BROOKE HARTLEY
Assistant District Attorney

COMMONWEALTH'S CERTIFICATE OF SERVICE

I hereby certify under the pains and penalties of perjury that I have today made service on the defendant by e-filing a copy of the brief and sending it to John Warren, at john@johnpwarrenlaw.com.

Respectfully submitted
For the Commonwealth,
KEVIN R. HAYDEN
District Attorney
For the Suffolk District

BROOKE HARTLEY
Assistant District Attorney
For the Suffolk District
BBO# 704119
One Bulfinch Place
Boston, MA 02114
(617) 619-4344
Brooke.Hartley@mass.gov

September 24, 2025

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

SJC-13816

COMMONWEALTH OF MASSACHUSETTS,
Appellee,

V.

JOSE ARIAS,
Appellant

COMMONWEALTH'S BRIEF
ON APPEAL FROM A JUDGMENT OF
THE SUFFOLK SUPERIOR COURT

SUFFOLK COUNTY
