

No. SJC-13248

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**Commonwealth of Massachusetts**  
**Supreme Judicial Court**

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COMMONWEALTH

*v.*

DAVID PRIVETTE

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ON THE DEFENDANT'S INTERLOCUTORY APPEAL  
FROM AN ORDER OF THE SUFFOLK SUPERIOR COURT

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REPLY BRIEF FOR THE DEFENDANT

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August 19, 2022

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....3

ARGUMENT.....4

**I.**    The Commonwealth offers no answer to the defendant’s argument that the judge found that the officers did not hear the description of the beard prior to the stop .....4

**II.**   The Commonwealth offers no answer to the defendant’s arguments regarding the collective knowledge doctrine....5

CONCLUSION.....6

CERTIFICATE OF COMPLIANCE.....7

CERTIFICATE OF SERVICE.....7

TABLE OF AUTHORITIES

Cases

*Commonwealth v. Jones-Pannell*,  
472 Mass. 429 (2015).....5

*Commonwealth v. Garner*,  
490 Mass. 90 (2022).....5

## ARGUMENT

As argued in the defendant's principal brief, the motion judge erred in denying the motion to suppress evidence because, due to the conspicuous differences between the description of the suspect and the defendant's appearance, the police lacked reasonable suspicion to stop the defendant. Nothing in the Commonwealth's brief undermines this conclusion.

**I. The Commonwealth offers no answer to the defendant's argument that the judge found that the officers did not hear the description of the beard prior to the stop.**

The defendant has argued that, given the judge's findings as to the content of the description, she did not find that the officers heard the dispatch mentioning facial hair prior to the stop. D.B. 33-34.<sup>1</sup> The Commonwealth does not address this contention. Instead, it argues that the judge could have "implicitly" found that Officer Doherty heard the later broadcast. C.B. 33-34 n.20. The judge's omission of the beard cannot be read as an implicit finding that the officers were aware of the beard. In fact, the opposite is true. The fact that the motion judge did not include the beard in her detailed

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<sup>1</sup> The defendant's principal brief will be cited as "D.B. \_\_"; the Commonwealth's brief will be cited as "C.B. \_\_"; and the record appendix to defendant's principal brief will be cited as "R. \_\_".

factual findings regarding the description shows that she did *not* find that either officer heard the broadcast.<sup>2</sup> This factual finding is binding absent clear error. *Commonwealth v. Jones-Pannell*, 472 Mass. 429, 431 (2015). The Commonwealth does not argue that the judge’s well-supported finding is clearly erroneous, but simply ignores it. That approach cannot prevail.

**II. The Commonwealth offers no answer to the defendant’s arguments regarding the collective knowledge doctrine.**

The defendant has argued, as a matter of state constitutional law and sound policy, that the collective knowledge doctrine should be limited to its vertical application. D.B. 40-46. A strict vertical application of the doctrine is necessary to effectuate the key deterrent purpose of the exclusionary rule. The Commonwealth makes no attempt to address this argument. The defendant adheres to his argument and the Commonwealth offers nothing to refute it.

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<sup>2</sup> In her prefatory statement, the motion judge did credit the officers’ testimony (R. 41-42). But, as this Court has recently made clear, “we do not agree that a general statement crediting witness testimony means that every statement the witness makes on the stand is automatically a fact found by the motion judge.” *Commonwealth v. Garner*, 490 Mass. 90, 94 (2022).

CONCLUSION

For the reasons explained herein, and in the defendant's principal brief, the order denying the defendant's motion to suppress must be reversed.

Respectfully submitted,

*/s/ Anne Rousseve*

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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: Rule 16(a)(13) (addendum); Rule 16(e) (references to the record); Rule 18 (appendix to the briefs); Rule 20 (form and length of briefs, appendices, and other documents); and Rule 21 (redaction). This reply brief is set in 14-point Athelas and contains 439 non-excluded words, as determined through the “Word Count” feature in Microsoft Word for Office 365.

*/s/ Anne Rousseve*

Anne Rousseve

CERTIFICATE OF SERVICE

I hereby certify that in the matter of *Commonwealth v. David Privette*, SJC-13248, I have today served the Reply Brief of the Defendant-Appellant David Privette on the Commonwealth by directing a copy to be served through the electronic filing service provider to Assistant District Attorney Kathryn Sherman.

*/s/ Anne Rousseve*

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