

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

PLYMOUTH COUNTY

NO. 2008-P-0531

**No. SJC-10657**

COMMONWEALTH

V.

JOSEPH BEATRICE

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BRIEF AND RECORD APPENDIX FOR THE DEFENDANT  
ON APPEAL FROM  
THE BROCKTON DISTRICT COURT

---

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June, 2008.

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ISSUES PRESENTED

1. Whether in a case in which the complainant did not testify, it was a violation of the Federal Constitution to admit the complainant's 911 call to the police, which was made from a neighbor's house, out of the defendant's presence, and described past events which the complainant could reasonably believe would be used by the police to arrest and prosecute the defendant.

2. Whether it was prejudicial error to exclude the complainant's statement to the police that she had stabbed the defendant four months before the 911 call, where this statement would have been admissible to impeach the complainant if she had testified and denied that the statement was true.

3. Whether it was a violation of the doctrine of completeness for the judge to prevent the defense from bringing out on cross-examination the whole of the statement which the defendant gave to Detective Congdon, where the partial statement introduced in evidence gave the erroneous impression that the defendant had admitted his guilt to assaulting the complainant when in fact the defendant had said that the reason he had used

force to prevent the complainant from leaving the room was because he was afraid she would get a knife from the kitchen and stab him with it.

4. Whether it was a violation of the Federal Constitution for the judge to require the defendant to testify before he could introduce the whole of the statement which he had given to Officer Congdon.

STATEMENT OF THE CASE

On April 20, 2006, the defendant was charged in Brockton District Court complaint number 0615CR002734 with threats, intimidation of a witness, and two counts of assault and battery, all alleged to have occurred on April 7, 2006. The defendant was arraigned on April 20, 2006 (R. 1, 2, 5).<sup>1/</sup>

On June 27, 2006, a hearing was held before Sullivan, J. on the prosecution's motion in limine to admit the contents of two 911 calls. The motion was

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<sup>1/</sup>The record appendix will be designated as (R. ). The transcript of the June 27, 2006, pretrial hearing is contained in the first volume of the transcript and will be designated as (Tr. 1/ ). The second volume contains the first day of the trial, which occurred on June 28, 2006, and will be designated (Tr. 2/ ). The third volume contains the third day of trial, which occurred on June 29, 2006, and will be designated (Tr. 3/ ).

allowed in part and denied in part (R. 3, Tr. 1/31-32).

On June 28, 2006, counts one and two of complaint 2734 were dismissed at the request of the prosecution. On June 28 and 29, 2006, the defendant was tried before Dineen, J., and a jury (R. 3-4, Tr. 2/66), on counts 3 and 4 of complaint 2734, both of which charged assault and battery on April 7, 2006, and on charges of threats and assault and battery on April 12, 2006, on complaint 2543.

On June 29, 2006, the jury found the defendant not guilty on both the April 12, 2006, charges on complaint 2543, and not guilty on one charge of assault and battery on complaint 2734. He was found guilty of one assault and battery charge on 2734 (R. 1, 4, Tr. 3/161-164).

On June 29, 2006, the defendant was sentenced to eighteen months in the Plymouth House of Correction (R. 1, 4, Tr. 3/174). The defendant filed a timely notice of appeal on July 17, 2006 (R. 6).

#### STATEMENT OF FACTS

##### The 911 calls

At trial the tape of the complainant's 911 call which was made on April 7, 2006, was played over the

defendant's objection (Tr. 2/80).<sup>2/</sup> The defendant took objection to the introduction of the tape on the ground that its introduction would violate the confrontation rights of the defendant (Tr. 2/78-79). On the tape the complainant stated that she was calling from a neighbor's house and her boyfriend had just beaten her up. The boyfriend was still at their apartment, and she wanted the police to send a cruiser before he left. The police operator asked what her boyfriend's name was and the complainant stated that her boyfriend's name was Joseph Beatrice (Tr. 2/80).

The police investigation of the April 7 complaint

Officer Jorge Morena of the Brockton police department testified that he went to apartment 3B, 165 Carl Avenue, Brockton at 10 a.m. on April 7, 2006 (Tr. 2/81). He spoke to the complainant who had bruises on her face and arms, and, he thought, also had bruises on

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<sup>2/</sup>Prior to trial, on June 27, 2006, a hearing was held before Sullivan, J., on the admissibility of the 911 calls. After playing the tape of the April 7, 2006, call (Tr. 1/27), and hearing arguments from the prosecution (Tr. 1/26, 27, 31) and defense (Tr. 1/29), the judge ruled that the April 7 call was admissible (Tr. 1/31-32), and a portion of the April 12 call would also be admissible (Tr. 1/32-33).

The tape was not transcribed; however, the prosecutor did discuss the contents of the 911 call in her argument at the pre-trial hearing (Tr. 1/26-32).

on her ankle area (Tr. 2/82). She had a small abrasion on her left bicep (Tr. 2/94). The complainant was sent to the Brockton Hospital for emergency treatment (Tr. 2/84). The police searched the area for the suspect, Joseph Beatrice, but did not find him (Tr. 2/84). Officer Morena did not recall any bruises or swelling on the complainant's neck (Tr. 2/94-95).

The Commonwealth's version of the statement which the defendant gave to Officer Congdon on April 13, 2006

Brockton Detective Jacqueline Congdon testified that she interviewed the defendant after he had waived his Miranda rights on April 13, 2006 (Tr. 2/157). The defendant stated that on April 7, 2006, he got into a heated argument with the complainant. The complainant scratched his face and "he snapped" (Tr. 3/157, 159). The complainant wanted to leave the room "but he wasn't going to allow that." He admitted that "he did keep her in the room" (Tr. 2/159-160). He did "admit to punching her in the eye" (Tr. 2/162). He also said that the complainant had bit him on his hands and arms (Tr. 2/162).

The defense offer of proof on cross-examination of Detective Congdon

Prior to cross-examination of Detective Congdon,

The defense case

The defendant's testimony

The defendant testified that on April 7, 2006, the complainant came into the bathroom and started hitting and scratching him while he was on the toilet and that that is when he struck her (Tr. 3/18). Previously on January, 2006, the victim had stabbed him several times in the arm with a knife (Tr. 3/10).

On cross-examination the defendant admitted that he could have been convicted of assault and battery on June 2, 2003 (Tr. 3/53). The defendant was asked if he had been convicted of assault and battery and assault and battery by means of a dangerous weapon on October 6, 2000. The defendant answered that he had "several convictions of assault and battery" and did not "know the exact dates and times off the top of [his] head" (Tr. 3/53-54). He was asked if he had been convicted of assault and battery on September 19, 2000, and of assault and battery with a dangerous weapon on October 8, 2000 (Tr. 3/54). The defendant testified that he would have to give the same answer (Tr. 3/54). He remembered being convicted, but just did not remember the exact dates (Tr. 3/56).

Detective Congdon's "corroboration" testimony

Following the defendant's testimony, the defense was allowed to recall Detective Congdon. She testified that the defendant had told her on April 13 that the complainant had stabbed him repeatedly two or three months before the April incidents (Tr. 3/66). The defendant had showed her where the stab wounds had been (Tr. 68). He said the fight on April 7 began because when he was sitting on the toilet the complainant came in and scratched him (Tr. 3/69-70). He told Officer Congdon that the reason he had prevented the complainant from leaving was because he was fearful she would go into the kitchen and grab a knife and would stab him again (Tr. 3/69, 71).

Officer Congdon also testified that she had talked to the complainant before interviewing the defendant (Tr. 3/71). The defense attempted to ask Officer Congdon if the complainant had admitted to stabbing the defendant but the judge refused to allow Officer Congdon to answer (Tr. 3/72). The judge, over defense counsel's objection, refused to let Officer Congdon testify to what the complainant told her happened in January (Tr. 3/73).

ARGUMENT

I.

IN A CASE IN WHICH THE COMPLAINANT DID NOT TESTIFY, IT WAS A VIOLATION OF THE FEDERAL CONSTITUTION TO ADMIT THE COMPLAINANT'S 911 CALL TO THE POLICE, WHICH WAS MADE FROM A NEIGHBOR'S HOUSE, OUT OF THE DEFENDANT'S PRESENCE, AND DESCRIBED PAST EVENTS WHICH THE COMPLAINANT COULD REASONABLY BELIEVE WOULD BE USED BY THE POLICE TO ARREST AND PROSECUTE THE DEFENDANT.

In Davis v. Washington, 126 U.S. 2266, 2273-2274 (2006), the United States Supreme Court held that a statement is testimonial and its admission violates the confrontation clause of the Federal Constitution if there is no "ongoing emergency" and the primary purpose of the interrogation is "to establish or prove past events potentially relevant to later criminal prosecution." In the present case the complainant was calling from a neighbor's house and describing past events for the purpose of having the defendant arrested. Thus, the statement was testimonial and its admission violated the Federal Constitution.

Like Davis's companion case of Hammond v. Indiana, in which the declarant's statements were held to be testimonial, the declarant in this case was "actively separated from the defendant" and the statement "took place some time after the events described were over."

Id. at 2278. In the Davis case itself, the statement was held to be nontestimonial because the declarant was speaking "about events as they were actually happening" (emphasis original), and a reasonable listener would have recognized that she "was facing an ongoing emergency." Id. at 2276.

The prosecutor in this case argued that the 911 call showed that [the complainant] was "clearly out of breath. She clearly says he's still there, he's still in the apartment, come before he leaves. She says she's at her neighbor's house. I think one can certainly infer that she ran from the apartment where the defendant is to her neighbor's house to call 911 for help" (Tr. 1/31).<sup>3/</sup> The fact that the complainant had just run to her neighbor's house and was out of breath might aid the prosecution in showing that the statement was a spontaneous exclamation, but it does not aid the prosecution in showing that the statement was nontestimonial. It shows that the emergency was over; the

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<sup>3/</sup>In its argument on the Commonwealth's motion to admit the statement, the defense emphasized that the complainant was "describing past events"; she said she was "at a neighbor's house"; and the incident had "happened in the past" (Tr. 1/21). The defense relied on Davis v. Washington, 126 U.S. 2266 (2006), in arguing that the statement was inadmissible (Tr. 1/15).

complainant was separated from the defendant and not in immediate peril. She wanted the police to go to the apartment which she had left and arrest the defendant before he could leave. The complainant was not describing events which were actually happening. She was describing an assault which had allegedly occurred before she left her apartment. These were "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." Commonwealth v. Lao, 450 Mass. 215, 225 (2007), quoting Crawford v. Washington, 541 U.S. 36, 52 (2004).

When the police in this case asked the complainant the name of her boyfriend (Tr. 2/80), this question concerned the identity of the perpetrator of a past crime, and when the complainant stated that her boyfriend's name was Joseph Beatrice, she knew that she was providing information which would be of critical importance in any criminal prosecution and was information which the police needed to know before they could arrest and detain anyone as the perpetrator of the assault she had described.

In Commonwealth v. Lao, supra, 450 Mass. at 226,

the Supreme Judicial Court held that the complainant's 911 call reporting the defendant's attempt to run her over would "in all likelihood" have "been inadmissible pursuant to the principles enunciated in Crawford," because the defendant had "left the scene of the incident" and the 911 call was not "the reporting of an emergency situation" but was making a "solemn declaration" to the police for the purpose of establishing "some fact" involving the commission of a past crime. Commonwealth v. Lao, 450 Mass. at 226. In the present case the complainant was making a solemn declaration that the defendant, Joseph Beatrice, had just beaten her up for the purpose of establishing the fact that he had committed this past crime. Since the complainant did not testify, the statement was inadmissible under the principles enunciated in Crawford v. Washington, supra, and the defendant's conviction must be reversed.

II.

IT WAS PREJUDICIAL ERROR TO EXCLUDE THE COMPLAINANT'S STATEMENT TO THE POLICE THAT SHE HAD STABBED THE DEFENDANT FOUR MONTHS BEFORE THE 911 CALL BECAUSE THIS STATEMENT WOULD HAVE BEEN ADMISSIBLE TO IMPEACH THE COMPLAINANT IF SHE HAD TESTIFIED AND DENIED THAT THE STATEMENT WAS TRUE.

When an excited utterance is admitted into evidence

and the declarant does not testify, the declarant's excited utterance may be impeached "by any evidence that would have been admissible if the declarant had testified." Commonwealth v. Mahar, 430 Mass. 643, 649 (2000). This is because the exclusion of such evidence would give the jury "a distorted and incomplete view of the evidence" and "[t]here is no reason to put a proponent of an absent witness in a better position than a proponent of a live witness." Id. at 650. See also Commonwealth v. Cooper, 5 Allen (87 Mass.) 495, 498 (1862) (since a defendant cannot cross-examine the declarant of a dying declaration "he is entitled to every allowance and benefit that he may have lost by the absence of the opportunity of a more full investigation by means of cross-examination"). In the present case, the complainant's statement to Officer Congdon that she had stabbed the defendant some four months before her 911 call was relevant both on the issue of the defendant's self-defense claim, Commonwealth v. Adjutant, 443 Mass. 649, 654 (2005), and on the declarant's bias. Omamsky v. Shain, 313 Mass. 129, 132 (1943). If the complainant had testified, she would either have had to admit that the statement was true,

or the statement would have been admissible as a prior inconsistent statement. Commonwealth v. Mahar, supra, 430 Mass. at 649. Its exclusion when the complainant did not testify was reversible error.

In Commonwealth v. Mahar, supra, the Court said:

It is intuitively logical to conclude that, if a live witness's substantive testimony can be properly impeached by prior inconsistent statements or other evidence, the same testimony admitted through an exception to the hearsay rule ought to be subject to the same impeachment. Otherwise, the fact finder is given a distorted and incomplete view of the evidence in a case where hearsay testimony that could be, but is not, impeached, is admitted. There is no reason to put a proponent of an absent witness in a better position than a proponent of a live witness.  
430 Mass. 643, 650 (2000)

In the Maher case, the complainant's statement that the defendant had not hit her was admissible as a prior inconsistent statement to impeach her excited utterance that the defendant had attacked her. Id. at 648-649. In the present case, when the defense asked Officer Congdon whether the complainant had admitted stabbing the defendant, the question was excluded (Tr. 3/72-73). It was the judge's position that only the defendant or someone else who had witnessed the

stabbing could testify that it had occurred (Tr. 2/10).

It was the defense contention that the defendant had prevented the complainant from leaving the room because he was afraid the complainant would get a knife from the kitchen and stab him with it (Tr. 2/11, 163-164). In order to show that this fear was reasonable, the defendant needed to introduce evidence that the complainant had stabbed him four months earlier. Such evidence was admissible to show both the reasonableness of his reaction, Commonwealth v. Rodriguez, 418 Mass. 1, 5-6 (1994), and that the complainant was the initial aggressor. Commonwealth v. Adjutant, 443 Mass. 649, 654, 660, 664 (2005). It was also relevant to show bias towards the defendant on the declarant's part. Omamsky v. Shain, supra, 313 Mass. at 132 (fact that plaintiff's witness's husband had quarreled with the defendant was admissible as "affecting the credibility" of the witness). The fact that the stabbing also disclosed previous misconduct on the complainant's part did not make the stabbing inadmissible. Davis v. Alaska, 415 U.S. 308, 313-314, 316-317, 319 (1974) (defendant has a right to show witness's bias even if it discloses that witness was on juvenile probation);

Commonwealth v. Joyce, 382 Mass. 222, 229-232 (1981)  
(when evidence that complainant is a prostitute shows bias or motive to falsify on her part it is admissible as an exception to the rape shield law).

Although the defendant testified to the stabbing, this did not cure the error because "[e]vidence of statements favorable to the defendant coming from the lips of the witnesses for the prosecution would be apt to be given complete credence by the jury, whereas coming from the defendant alone, they might be viewed with the suspicion that they were of later invention." Commonwealth v. Britland, 300 Mass. 492, 496 (1938).

In her final argument the prosecutor emphasized that the only evidence that the complainant had stabbed the defendant had come "from the defendant himself", and there was no evidence that he had reported this incident to the police or gone to the hospital (Tr. 3/131). This argument implied that the defendant's statement that the complainant had stabbed him should be "viewed with the suspicion that they were of later invention." Id. Had the complainant's statement been admitted the jury likely would have given "complete credence" to her statement. Id.

Excluding this statement gave the jury a distorted view of the evidence and put the prosecution in a better position than it would have been in if the complainant had actually testified. It, thus, violated the holding in Commonwealth v. Maher, supra, 430 Mass. at 650, and, where self-defense and the complainant's credibility were key issues in the case, the error requires reversal.

III.

IT WAS A VIOLATION OF THE RULE OF COMPLETENESS FOR THE JUDGE TO PREVENT THE DEFENSE FROM BRINGING OUT ON CROSS-EXAMINATION THE WHOLE OF THE STATEMENT THE DEFENDANT HAD GIVEN TO OFFICER CONGDON WHERE THE PARTIAL STATEMENT INTRODUCED ON DIRECT EXAMINATION GAVE THE ERRONEOUS IMPRESSION THAT THE DEFENDANT HAD ADMITTED HIS GUILT TO ASSAULTING THE COMPLAINANT WHEN IN FACT THE DEFENDANT HAD SAID THAT THE REASON HE HAD USED FORCE TO PREVENT THE COMPLAINANT FROM LEAVING THE ROOM WAS BECAUSE HE WAS AFRAID SHE WOULD GET A KNIFE FROM THE KITCHEN AND STAB HIM WITH IT.

When the prosecution puts in part of a defendant's statement, the defense has a right on cross-examination to put in relevant portions of the same statement to "clarify the context" of the admitted portion. Commonwealth v. Eugene, 438 Mass. 343, 351 (2003). The judge violated this basic principle because, after Officer Congdon testified on direct examination that the defendant had admitted in his April 13, 2001, statement

that he had struck the complainant and prevented her from leaving the room (Tr. 2/160, 162), he refused to let the defense bring out on cross-examination that what the defendant had really said was that the reason they were fighting and the reason he had prevented her from leaving the room was that he was afraid she would get a knife from the kitchen and stab him like she had four months previously (Tr. 2/163-164, 173).

The reason for the "rule of completeness" is so that a party may not present "a fragmented and misleading version of events." Commonwealth v. Eugene, 438 Mass. 343 (2003). "The force and effect of particular expressions may be, and often are, greatly modified or affected by the connection in which they are uttered." Commonwealth v. Britland, 300 Mass. 492, 495-496 (1938) (when prosecution introduced evidence defendant admitted being with robbers at time of robbery, defendant had a right on cross-examination to bring out portions of statement which indicated that he had no intention of participating in a robbery). Cf. Commonwealth v. O'Dell, 392 Mass. 445, 449 (1984) (indictment dismissed for prosecutorial misconduct in misleading grand jury where edited portion of a

defendant's statement before the grand jury suggested an admission by silence when the defendant had actually denied his guilt). Because of the judge's ruling in this case, Officer Congdon's testimony on the prosecution's case in chief gave the jury the erroneous impression that the defendant had admitted his guilt to assault and battery, when he had actually claimed to have acted in self-defense.

Officer Congdon testified for the prosecution that in her April 13 interview with the defendant he admitted that he would not let the complainant leave the room and had punched her in the eye (Tr. 2/159-160, 162). After Officer Congdon's direct testimony, the defense counsels approached the bench before beginning cross-examination. They advised the judge that they wished to bring out on cross-examination that what the defendant had actually said to Officer Congdon was that the reason they were fighting was that he did not want the complainant to leave the room because "he was afraid she was going to get a knife, because she had stabbed him in the past" (Tr. 2/167), and "she had stabbed [him] real bad" (Tr. 2/173). The judge denied counsel's request. He stated that he did not intend to let the

evidence "come in now," but if the defense of self-defense was raised later then Officer Congdon could be recalled and the evidence introduced "as corroboration" (Tr. 2/170, 175-177).<sup>4/</sup>

The edited version of the defendant's statement gave the erroneous impression that the defendant had admitted his guilt when he had actually asserted that he had acted in self-defense to prevent the complainant from stabbing him. The procedure required by the judge violated the Federal Constitution because in order to introduce the explanatory part of the statement the defendant had to testify and disclose the fact that he had numerous prior convictions for assault and battery.

#### IV.

IT WAS A VIOLATION OF THE FEDERAL CONSTITUTION FOR THE JUDGE TO REQUIRE THE DEFENDANT TO TESTIFY BEFORE HE COULD INTRODUCE THE WHOLE OF THE STATEMENT WHICH HE HAD GIVEN TO OFFICER CONGDON.

A defendant does not have to waive his constitutional right to remain silent in order to present other defense evidence. Brooks v. Tennessee, 406 U.S. 605, 606, 611-613 (1972) (statute requiring defendant to testify before presenting other defense evidence was

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<sup>4/</sup>The prosecutor agreed "wholeheartedly" with this ruling (Tr. 2/170)

unconstitutional). But this is what the judge forced the defendant to do in this case. In order to introduce evidence showing that the defendant had not admitted his guilt to Detective Congdon, the defendant first had to testify and admit that he had a number of prior convictions for assault and battery.

Prior to trial there was a hearing on a motion in limine concerning the introduction of evidence that the complainant had stabbed the defendant some four months before the defendant allegedly assaulted the complainant (Tr. 2/6). The defense counsel pointed out that the defendant had told the police that "I was afraid she was going to get a knife like she did the last time, and that's why I struck her" (Tr. 2/11). The judge stated that evidence that the complainant had stabbed the defendant could not be introduced through Detective Congdon. The defendant or someone who had witnessed the stabbing would have to testify (Tr. 2/10). The judge also stated that if the defendant raised the issue of self-defense by testifying his prior convictions for assault and battery would be admissible (Tr. 2/14-16).

After Detective Congdon had testified on direct

examination on the prosecution's case in chief that the defendant had admitted striking the complainant and prevented her from leaving the room (Tr. 2/159-160, 162), the defense counsels approached the bench and advised the judge that they wished to bring out on cross-examination the whole of the defendant's statement (Tr. 2/167, 173). Counsel stated that if they could bring out the defense of self-defense through the police officer then they might not have to put on a defense (Tr. 2/164). The judge stated that he did not intend to let the evidence "come in now," but if the defense of self-defense was raised then Officer Congdon could be recalled and the evidence introduced "as corroboration" (Tr. 2/170, 176-177).

After the prosecution rested, the defendant testified as a witness in his own behalf and the prosecution impeached him<sup>5/</sup> with a number of prior convictions for

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<sup>5/</sup>On cross-examination the defendant admitted that he might have been convicted of assault and battery on June 2, 2003 (Tr. 3/53). The defendant was asked if he had been convicted of assault and battery and assault and battery by means of a dangerous weapon on October 6, 2000, of assault and battery on September 19, 2000, and of assault and battery with a dangerous weapon on October 8, 2000 (Tr. 3/53-54). The defendant answered that he had several convictions for assault and battery but could not remember the exact dates (Tr. 3/54).

assault and battery (Tr. 3/53-54). The defendant admitted that "he had several convictions of assault and battery and did not know the exact dates and times off the top of his head" (Tr. 3/54). He remembered being convicted; he just did not remember the dates (Tr. 3/56).

Following the defendant's testimony, the defendant recalled Detective Congdon and she testified that the defendant had said that the fight began when he was on the toilet and the complainant came in and scratched him (Tr. 3/69-70). He told Detective Congdon that "he was afraid that his girlfriend was going to stab him again" (Tr. 3/60). He said she had stabbed him four or five times two or three months before (Tr. 3/62). The defendant explained to her that the reason he tried to prevent the complainant from leaving was that "[h]e was fearful she'd go into the kitchen and grab a knife" (Tr. 3/69).<sup>6/</sup>

The procedure required by the judge was a clear violation of the holding in Brooks v. Tennessee, 406 U.S. at 611-613, that a defendant may not be forced to

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<sup>6/</sup>The judge also prohibited the defense from asking leading questions of Officer Coughlin when she was recalled as a defense witness (Tr. 3/71).

testify before presenting other defense evidence. This unconstitutional procedure was prejudicial because it "open[ed] the door to otherwise inadmissible evidence which [was] damaging to [the defendant's] case." Id. at 609. It forced the defendant to admit that he had several prior convictions for assault and battery, before he could introduce defense evidence through Detective Congdon.

CONCLUSION

For the reasons stated, the conviction should be vacated and a new trial should be granted.

Respectfully submitted,

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June, 2008.

CERTIFICATE OF COMPLIANCE

I, the undersigned, counsel to the defendant herein, 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)(6) (pertinent findings or memorandum of decision), 16(e) (references to the record), 16(f) (reproduction of statutes, rules, regulations), 16(h) (length of briefs), 18 (appendix to the briefs), and 20 (form of briefs, appendices, and other papers).




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RECORD APPENDIX

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RECORD OF CRIMINAL CASE.....R.1  
CRIMINAL COMPLAINT.....R.5  
NOTICE OF APPEAL.....R.6

<b>RECORD OF CRIMINAL CASE</b>		DOCKET NO. <b>0615 CR 002734</b>	<b>Trial Court of Massachusetts District Court Department</b> 		
DEFENDANT NAME <b>JOSEPH BEATRICE</b>		COURT NAME & ADDRESS <b>BROCKTON DISTRICT COURT 215 MAIN ST P.O. BOX 7610 BROCKTON MA 02303-7610 (508) 587-8000</b>			
DEFENDANT ALIAS(ES)					
DEFENDANT ADDRESS <b>165 CARL AVE # 144 E</b>		CITY/TOWN <b>BROCKTON</b>	STATE <b>MA</b>	ZIP CODE <b>02302</b>	
SEX <b>M</b>	DATE OF BIRTH <b>5/10/80</b>	CITY OF BIRTH <b>COCO BEACH</b>	STATE OF BIRTH <b>FL</b>	SOCIAL SECURITY NO. <b>010-70-9129</b>	
MOTHER'S MAIDEN NAME <b>BENEFIT, ELAINE</b>		FATHER'S NAME <b>CAPIELLO, JOSEPH</b>			
PCF NO. <b>2145644</b>	SID NO.	DRIVERS LICENSE NO. <b>S90490724</b>		LICENSE STATE <b>MA</b>	
<b>CASE INFORMATION</b>					
NO. COUNTS <b>4</b>	POLICE DEPT <b>BRO</b>	POLICE INCIDENT NO.	OFFENSE LOCATION <b>BROCKTON</b>	ARREST DATE	MV CITATION NO.
CURRENT DEFENSE ATTORNEY <b>CARLO A OBLIGATO</b>			ATTORNEY TYPE <b>APPOINTED - INDIGENT</b>		
CURRENT PROSECUTOR <b>ROBERT C THOMPSON</b>			COMPLAINANT <b>CESARINI, SGT. ANDREW H.</b>		
<b>OFFENSE AND JUDGMENT INFORMATION</b>					
COUNT: 1 OFFENSE DATE: APRIL 7, 2006 275/2 THREAT TO COMMIT CRIME					
JUDGMENT DATE: 6/29/06 JUDGMENT METHOD: DISMISSED			JUDGMENT JUDGE: HON. JAMES F. X. DINNEEN JUDGMENT: DISMISSED-REQUEST COMPLNT		
COUNT: 2 OFFENSE DATE: APRIL 7, 2006 268/13B/A WITNESS, INTIMIDATE					
JUDGMENT DATE: 6/29/06 JUDGMENT METHOD: DISMISSED			JUDGMENT JUDGE: HON. JAMES F. X. DINNEEN JUDGMENT: DISMISSED-REQUEST COMPLNT		
COUNT: 3 OFFENSE DATE: APRIL 7, 2006 265/13A/B A&B					
JUDGMENT DATE: 6/29/06 JUDGMENT METHOD: JURY TRIAL JAIL START DATE: 6/29/06 TERM OF SENTENCE: 18 MONTHS AMOUNT TO BE SERVED: 18 MONTHS JAIL CREDIT DAYS: 71 CONSECUTIVE TO:			JUDGMENT JUDGE: HON. JAMES F. X. DINNEEN JUDGMENT: GUILTY INSTITUTION: PLYMOUTH HOUSE OF CORRECTION  CONCURRENT WITH:		
COUNT: 4 OFFENSE DATE: APRIL 7, 2006 265/13A/B A&B					
JUDGMENT DATE: 6/29/06 JUDGMENT METHOD: JURY TRIAL			JUDGMENT JUDGE: HON. JAMES F. X. DINNEEN JUDGMENT: NOT GUILTY		
----- <b>BAIL/BOND INFORMATION</b> -----					
BAIL TYPE	BOND AMT SET	CASH AMT SET	DATE SET	JUDGE	
W/O BAIL			4/20/06	HON. PAUL C. DAWLEY	
PAGE <b>1</b>	DATE RECORD PRINTED <b>4/10/08</b>	A TRUE COPY ATTEST	CLERK/MAGISTRATE <i>Ken P. Reader</i>		

<b>RECORD OF CRIMINAL CASE</b>	DOCKET NO <b>0615 CR 002734</b>	<b>Trial Court of Massachusetts District Court Department</b>
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DOCKET ENTRIES  
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DATE	CODE	DOCKET ENTRY	JDG/MAG	ACTION DATE
4/20/06	AC	APPLICATION FOR COMPLAINT FILED		
4/20/06	ZCI	COMPLAINT ISSUED	KML	
4/20/06	PI	PROBATION INTAKE FORM PRINTED	KML	
4/20/06	WARC	WARRANT ON COMPLAINT ISSUED FOR DEFENDANT	KML	
4/20/06	WR	WARRANT RECALLED; DEFAULT REMOVED	KML	4/20/06
4/20/06	DRH	DEFAULT REMOVAL HEARING SCHEDULED FOR	KML	4/20/06
4/20/06	AIC	ACTION IN COURT FORM	KML	
4/20/06	WR	WARRANT RECALLED; DEFAULT REMOVED	PCD	
4/20/06	ARRH	ARRAIGNMENT HELD	PCD	
4/20/06		COMMONWEALTH MOTION FOR 58A DH FILED -ALLOWED	PCD	
4/20/06		COMM MOTION TO AMEND DOO ON CT 1 TO 4/12/06		
4/20/06		AND COUNT 4 NAME OF VICTIM TO VERONICA		
4/20/06		VASQUEZ - ALLOWED	PCD	
4/20/06	DHH	DETENTION HEARING (276 §58A) HELD	PCD	
4/20/06		SEQUESTRATION OF WITNESSES ORDERED	PCD	
4/20/06		EXHIBITS:		
4/20/06		1. PHOTO - VICTIME FULL FACE		
4/20/06		2. PHOTO - CLOSE UP VICTIM'S EYE		
4/20/06		3. PHOTO - VIC'S ARM		
4/20/06		4. PHOTO - VIC'S LEG		
4/20/06		5. PHOTO - VIC'S FOREARM		
4/20/06		6. PHOTO - VIC'S RIGHT EYE		
4/20/06		7. PHOTO - VIC'S BICEP (BRUISED)		
4/20/06		8. PHOTO - VIC'S LEFT SHOULDER		
4/20/06		9. PHOTO - VIC'S RIGHT EYE		
4/20/06		10. PHOTO - VIC'S UPPER ARM		
4/20/06		11. MEDICAL RECORDS		
4/20/06		12. COPY OF 209A RO		
4/20/06		13. DEFENDANT'S BOP		
4/20/06		14. OFFICER UHLMAN'S POLICE REPORT		
4/20/06		MOTION TO DETAIN UNDER C276, 58A - ALLOWED	PCD	
4/20/06	BRW	BAIL REVOCATION WARNING (276 §58) GIVEN DEFT	PCD	
4/20/06	BRN	BAIL REVIEW NOTICE GIVEN DEFENDANT	PCD	
4/20/06	WR	WARRANT RECALLED; DEFAULT REMOVED	PCD	4/20/06
4/20/06	PT	PRETRIAL HEARING SCHEDULED FOR		5/17/06
4/20/06	MITB	MITTIMUS IN LIEU OF BAIL TO		
4/20/06		PJ : PLYMOUTH JAIL		
4/27/06	CAI	COUNSEL APPOINTED FOR INDIGENT DEFENDANT	PCD	
4/27/06		663530 BARRETT, CARLA		
5/17/06	PTHH	PRETRIAL HEARING HELD	FXD	5/17/06
5/17/06	PTRF	PRETRIAL CONFERENCE REPORT FILED	FXD	
5/17/06		FILE ORDERED JOINED W/06-2543	FXD	
5/17/06	JT	JURY TRIAL SCHEDULED FOR	FXD	6/26/06
5/17/06	MITB	MITTIMUS IN LIEU OF BAIL TO	FXD	
5/17/06		PJ : PLYMOUTH JAIL		
6/12/06	BF	BROUGHT FORWARD	FXD	6/26/06
6/12/06	MFC	MOTION FOR CONTINUANCE SCHEDULED FOR		6/12/06
6/12/06		BY COMMONWEALTH		
6/13/06	MA	MOTION ALLOWED	FXD	6/12/06
6/13/06	JT	JURY TRIAL SCHEDULED FOR		6/27/06
6/13/06	NONE	NOTICE OF NEXT EVENT ISSUED		
6/13/06	MITB	MITTIMUS IN LIEU OF BAIL TO		
6/13/06		PJ : PLYMOUTH JAIL		
6/13/06		CPCS C. BARRETT FILED:		
6/13/06		EX PARTE MOTION FOR FUNDS FOR TRANSCRIPT;		
6/13/06		AFFIDAVIT IN SUPPORT OF MOTION FOR FUNDS		

**RECORD OF CRIMINAL CASE**

DOCKET NO.

**0615 CR 002734**

**Trial Court of Massachusetts  
District Court Department**



6/13/06	TUA	JUDGE DINNEEN	KML	
6/16/06	MA	MOTION FOR FUNDS ALLOWED UP TO \$300 AT THIS TIME	FXD	
6/16/06		ADA L. WEIERMAN FILED:		
6/26/06		COMMONWEALTH'S MOTION IN LIMINE TO INTRODUCE THE DEFENDANT'S PRIOR CONVICTIONS		
6/26/06	JTB	JURY TRIAL BEGUN JOINED WITH #0615CR002543	JS	
6/27/06	SIOC	STIPULATION IN OPEN COURT: 911 TAPES ARE AUTHENTIC RECORDS OF BPD AND REC'D ON 04/07/06 AND 04/12/06.	JS	
6/27/06		CPCS C. BARRETT FILED IN COURT:		
6/27/06		MOTION IN LIMINE TO EXCLUDE HEARSAY		
6/27/06	MHD	MOTION HEARD AND DENIED AS TO 04/04 CALL	JS	
6/27/06	MH	MOTION HEARD AND DENIED IN PART AND ALLOWED IN PART AS TO THE 04/12 CALL.	JS	
6/27/06		MOTION IN LIMINE TO EXCLUDE EVIDENCE OF DEFENDANT'S PRIOR CONVICTION(S)		
6/27/06	MH	MOTION HEARD AND ALLOWED IN PART AND DENIED IN PART	JS	
6/27/06		PREVIOUSLY FILED BY ADA L. WEIERMAN:		
6/27/06		COMMONWEALTH'S MOTION IN LIMINE TO INTRODUCE THE DEFENDANT'S PRIOR CONVICTIONS		
6/27/06	MH	MOTION HEARD AND ALLOWED IN PART AND DENIED IN PART	JS	
6/27/06	C	CONTINUED	JS	6/27/06
6/27/06	JTP	JURY TRIAL IN PROGRESS SCHED TO CONTINUE ON ACTION IN COURT FORM	JS	
6/27/06	AIC	JURY VERDICT SLIP(S) PRINTED	JS	
6/28/06	JVS	JUDGE SULLIVAN WAS NOT AVAILABLE TO CONTINUE TRIAL (IN ANOTHER COURT) JUDGE DINNEEN AGREED TO ACTION TAKEN ON MOTIONS DAY BEFORE AND TO CONTINUE FROM THAT POINT	JS	6/28/06
6/28/06		COUNTS 1 AND 2 OF THIS DOCKET DISMISSED AT COMMONWEALTH'S REQUEST	JS	6/29/06
6/28/06		CPCS C. BARRETT FILED IN COURT:		
6/28/06		DEFENDANT'S MOTION FOR INDIVIDUAL VOIR DIRE MOTION(S) HEARD	FXD	
6/28/06	MH	DEFENDANT'S MOTION FOR JURY INSTRUCTIONS COMMONWEALTH'S EXHIBITS:		
6/28/06		PHOTOS DATED 04/07/06:		
6/28/06		1) PHOTO OF VICTIM (FACE / SWOLLEN LIP)		
6/28/06		2) PHOTO OF VICTIM (BRUISED LEFT SHOULDER)		
6/28/06		3) PHOTO OF VICTIM (RED SCRATCH LEFT ARM)		
6/28/06		4) PHOTO OF VICTIM (CRYING/FACE& LEFT EYE)		
6/28/06		5) PHOTO OF VICTIM (BACK OF NECK/SHOULDER)		
6/28/06		6) PHOTO OF VICTIM (BRUISED LEFT SHOULDER)		
6/28/06		7) BROCKTON HOSPITAL MEDICAL RECORDS		
6/28/06		PHOTOS DATED 07/13/06:		
6/28/06		8) PHOTO OF VICTIM (BRUISED RIGHT EYE)		
6/28/06		9) PHOTO OF VICTIM (BRUISED/SHUT RTIGHT EYE)		
6/28/06		10) PHOTO OF VICTIM (BRUISED ARM)		
6/28/06		11) PHOTO OF VICTIM (BRUISED RT SIDE)		
6/28/06		12) PHOTO OF VICTIM (LEFT SHOULDER AND ARM)		
6/28/06		13) 911 TAPE OF 04/07/06		
6/28/06		14) 911 TAPE OF 04/12/06		
6/28/06	MRF	MOTION FOR REQUIRED FINDING OF N.G. FILED AT CLOSE OF COMMONWEALTH'S CASE		
6/28/06	MD	MOTION DENIED-ALL COUNTS ON BOTH COMPLAINTS	FXD	
6/28/06	C	CONTINUED	FXD	
6/28/06	JTP	JURY TRIAL IN PROGRESS SCHED TO CONTINUE ON	FXD	6/29/06
6/28/06	MITB	MITTIMUS IN LIEU OF BAIL TO PJ : PLYMOUTH JAIL	JS	
6/29/06	MRFM	MOTION FOR REQUIRED FINDING OF N.G. MADE AT		

PAGE DATE DOCKET PRINTED

3

4/10/08

A TRUE COPY ATTEST

CLERK/MAGISTRATE

*Kevin P. Quader*

<b>CRIMINAL COMPLAINT</b>		DOCKET NO. 0615 CR 002734		Trial Court of Massachusetts District Court Department	
DEFENDANT NAME JOSEPH BEATRICE				COURT NAME & ADDRESS BROCKTON DISTRICT COURT 215 MAIN ST P.O. BOX 7610 BROCKTON MA 02303-7610 (508) 587-8000	
DEFENDANT DOB 5/10/80	DATE OF COMPLAINT 4/20/06	DATE OF OFFENSE 4/07/06	NO OF COUNTS 4		
OFFENSE LOCATION BROCKTON		POLICE DEPT. OF OFFENSE BROCKTON POLICE DEPT.			
POLICE INCIDENT NO.	ARREST DATE	WARRANT ON COMPLAINT DATE 4/20/06		ARRAIGNMENT SCHEDULED FOR	

The undersigned complainant, on behalf of the Commonwealth, on oath complains that on the date(s) indicated the defendant committed the offense(s) listed below and on any attached pages.

1. 275/2 THREAT TO COMMIT CRIME

on APRIL 7, 2006 did threaten to commit a crime against the person or property of another, to wit: MURDER, in violation of G.L. c.275, §2. (PENALTY from \$4: imprisonment not more than 6 months; or not more than \$100; or recognizance to keep the peace for up to 6 months.)

2. 268/13B/A WITNESS, INTIMIDATE

on APRIL 7, 2006 did, directly or indirectly, wilfully endeavor by means of a gift, offer or promise of something of value or by misrepresentation, intimidation, force or express or implied threats of force, to influence, impede, obstruct, delay or otherwise interfere with a witness in a stage of a trial, grand jury or other criminal proceeding, or with a person furnishing information to a criminal investigator relating to a violation of a criminal statute of this Commonwealth, in violation of G.L. c.268, §13B. (PENALTY: state prison not less than 2 1/2 years, not more than 10 years; or house of correction not more than 2 1/2 years; and not less than \$1000, not more than \$5000. District Court has final jurisdiction under G.L. c.218, §26.)

3. 265/13A/B A&B

on APRIL 7, 2006 did assault and beat VERONICA VAZQUEZ, in violation of G.L. c.265, §13A(a). (PENALTY: house of correction not more than 2 1/2 years; or not more than \$1000.)

4. 265/13A/B A&B

on APRIL 7, 2006 did assault and beat *Veronica Vasquez* MIRIAM VASQUEZ, in violation of G.L. c.265, §13A(a). (PENALTY: house of correction not more than 2 1/2 years; or not more than \$1000.)

*Comin's motion to amend  
by changing  
date of offense on Ct. 1 is changed  
to 4/12/06  
name of alleged victim on Ct. 4 is  
changed to Veronica Vasquez  
P.P.  
4/20/06*

SIGNATURE OF COMPLAINANT  
X *Andrew H. Cesarini*  
SGT. ANDREW H. CESARINI

SWORN TO BEFORE ME  
X *Tim M. Seal*  
CLERK-MAGISTRATE/ASST. CLERK/DEPUTY ASST. CLERK

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

BROCKTON DISTRICT COURT  
DOC. NO. 0615 CR 002734

COMMONWEALTH

v.

JOSEPH BEATRICE

NOTICE OF APPEAL

Notice is hereby given that the defendant in the above case, Mr. Joseph Beatrice, being aggrieved by certain opinions, rulings, directions and judgments of the Court, hereby appeals his conviction pursuant to Massachusetts Rules of Appellate Procedure, Rule 3.

Respectfully Submitted,  
JOSEPH BEATRICE,  
By His Attorney,

Carla Barrett

Carla Barrett  
BBO #663530  
Committee for Public Counsel Services  
144 Main Street, Fourth Floor  
Brockton, MA 02301  
(508) 583-5316

Date: July 17, 2006

2006 JUL 17 PM 1:37  
BROCKTON DISTRICT COURT  
CLERK'S OFFICE