

No. _____

In The
Supreme Court Of The United States

ANTONIO B. NASCIMENTO-DEPINA,
Petitioner,

v.

COMMONWEALTH OF MASSACHUSETTS
Respondent.

*On Petition For Writ Of Certiorari
To The Massachusetts Appeals Court*

APPENDIX

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July 2025

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496 Mass. 1

Supreme Judicial Court of Massachusetts,
Bristol.

COMMONWEALTH

v.

Antonio NASCIMENTO-DEPINA.

SJC-13664

|

Argued January 8, 2025

|

Decided May 8, 2025

Synopsis

Background: Defendant was convicted in the Superior Court Department, [Daniel J. O'Shea, J.](#), of aggravated rape of a child and indecent assault and battery on a child under 14 years old. Defendant appealed, and case was transferred from the Appeals Court.

Holdings: The Supreme Judicial Court, [Wolohojian, J.](#), held that:

[1] reviewing analyst's testimony on direct examination concerning contents of non-testifying analyst's report regarding DNA evidence obtained from bedding was hearsay;

[2] report was testimonial, and thus admission of its contents through reviewing analyst's hearsay testimony violated Confrontation Clause;

[3] trial court's error in admitting reviewing analyst's testimony did not result in substantial risk of miscarriage of justice;

[4] minor victim's testimony that defendant, her maternal grandfather, had touched her inappropriately when the family lived in another city, was admissible other-act evidence; and

[5] admission of minor victim's testimony without limiting instruction was within bounds of trial judge's discretion.

Affirmed.

West Headnotes (12)

[1] Criminal Law 🔑 Reception of evidence

Where argument that right to confrontation was violated was not preserved in trial court, Supreme Judicial Court reviews to determine whether there was error and, if so, whether it resulted in a substantial risk of a miscarriage of justice, which occurs when Court has a serious doubt whether the result of the trial might have been different had the error not been made. [U.S. Const. Amend. 6](#); [Mass. Const. pt. 1, art. 12](#).

[2] Criminal Law 🔑 Identification of persons, things, or substances

Reviewing analyst's testimony on direct examination concerning contents of non-testifying analyst's report regarding DNA evidence obtained from bedding was "hearsay," in prosecution for aggravated rape of a child and indecent assault and battery on a child under 14 years old.

[3] Criminal Law 🔑 Use of documentary evidence

Non-testifying analyst's report concerning DNA evidence obtained from bedding was "testimonial," and thus admission of its contents through reviewing analyst's hearsay testimony on direct examination violated Confrontation Clause, in prosecution for aggravated rape of a child and indecent assault and battery on a child under 14 years old; report was prepared for use in connection with prosecution. [U.S. Const. Amend. 6](#); [Mass. Const. pt. 1, art. 12](#).

[4] Criminal Law 🔑 Sources of data

An expert's testimony to the fact of a nontestifying analyst's test results is "hearsay," and courts do not allow expert witnesses to testify to the specifics of hearsay information underlying the opinion on direct examination.

[5] Criminal Law 🔑 Opinion evidence

Trial court's error in admitting reviewing analyst's testimony on direct examination concerning contents of non-testifying analyst's report regarding DNA evidence obtained from bedding did not result in substantial risk of miscarriage of justice, in prosecution for aggravated rape of a child and indecent assault and battery on a child under 14 years old; case turned entirely on jury's assessment of minor victim's credibility, victim's testimony bore many indicia of reliability, victim's account of events remained consistent from her first report through time of trial, her testimony about assault and circumstances surrounding it was detailed and precise, and language victim used to describe assault was consistent with understanding and vocabulary of a child, permitting inference that it was not influenced by an adult, contrived, or otherwise manufactured.

[6] Criminal Law 🔑 Necessity of Objections in General

To evaluate whether an error resulted in a substantial risk of a miscarriage of justice, the Supreme Judicial Court assesses the case as a whole and considers the strength of the Commonwealth's case, the nature of the error, the significance of the error in the context of the trial, and the possibility that the absence of an objection was the result of a reasonable tactical decision.

[7] Criminal Law 🔑 Reception and Admissibility of Evidence

Supreme Judicial Court reviews to determine whether trial judge abused his discretion in admitting evidence and does not overturn trial judge's decision on these issues absent clear error of judgment in weighing relevant factors.

[8] Criminal Law 🔑 Purposes for Admitting Evidence of Other Misconduct**Criminal Law** 🔑 Showing bad character or criminal propensity in general

Evidence of a defendant's prior bad acts is not admissible to show bad character or criminal propensity; it may be admitted, however, where it is relevant for a nonpropensity purpose, such as to show a common scheme, pattern of operation, absence of accident or mistake, identity, intent, or motive. [Mass. Guide to Evid. § 404\(b\)\(2\)](#).

[9] Criminal Law 🔑 Sex offenses, incest, and prostitution

Where a defendant is charged with sexual assault, some evidence of similar uncharged conduct may be admissible to give the jury a view of the entire relationship between the defendant and the alleged victim, and the probative existence of the same passion or emotion at the time in issue; however, such evidence should not be admitted if its probative value is outweighed by the risk of unfair prejudice to the defendant. [Mass. Guide to Evid. § 404\(b\)\(2\)](#).

[10] Criminal Law 🔑 Sex offenses, incest, and prostitution**Criminal Law** 🔑 Same or identical victims**Criminal Law** 🔑 Close temporal proximity

Minor victim's testimony that defendant, her maternal grandfather, had touched her inappropriately when the family lived in another city, was admissible other-act evidence, in prosecution for aggravated rape of a child and indecent assault and battery on a child under 14 years old; evidence was probative, conduct involved same victim, took place in same setting, the family home, and occurred relatively close in time to charged conduct, it shed light on relationship between defendant and victim, risk of prejudice was slight given prosecutor's limited inquiry into subject, only four questions, and testimony's lack of detail, and prosecutor referred to evidence only briefly in closing to argue pattern of escalating conduct. [Mass. Guide to Evid. § 404\(b\)\(2\)](#).

[11] **Criminal Law** 🔑 Limiting effect of evidence of other offenses

Admission of minor victim's testimony, that defendant, her maternal grandfather, had touched her inappropriately when the family lived in another city, without limiting instruction was within bounds of trial judge's discretion, in prosecution for aggravated rape of a child and indecent assault and battery on a child under 14 years old, given limited nature of testimony and fact that prosecutor confined his argument concerning evidence to permissible use. [Mass. Guide to Evid. § 404\(b\)\(2\)](#).

[12] **Criminal Law** 🔑 Purpose and effect of evidence

There is no requirement that a judge sua sponte give a limiting instruction.

****1288** Rape. Indecent Assault and Battery. Constitutional Law, Confrontation of witnesses. Practice, Criminal, Confrontation of witnesses, Witness, Hearsay, Instructions to jury. Evidence, Expert opinion, Hearsay, Prior misconduct, Relevancy and materiality. Witness, Expert. Deoxyribonucleic Acid.

Indictments found and returned in the Superior Court Department on November 29, 2018.

The cases were tried before [Daniel J. O'Shea](#), J.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Attorneys and Law Firms

[Brad P. Bennion](#) for the defendant.

[David B. Mark](#), Assistant District Attorney, for the Commonwealth.

[Christopher DeMayo](#), for Elana Gordon, amicus curiae, submitted a brief.

Present: [Budd](#), C.J., [Gaziano](#), [Kafker](#), [Wendlandt](#), [Georges](#), [Dewar](#), & [Wolohojian](#), JJ.

Opinion

[WOLOHOJIAN](#), J.

***2 **1289** The defendant was convicted by a jury of aggravated rape of a child, [G. L. c. 265, § 23A](#), and indecent assault and battery on a child under fourteen years old, [G. L. c. 265, § 13B](#). The charges stem from the defendant's rape and sexual assault of his twelve year old granddaughter. In this direct appeal from his convictions, the defendant raises two arguments. First, he argues that a reviewing analyst's testimony violated his confrontation rights under the Sixth Amendment to the United States Constitution and art. 12 of the Massachusetts Declaration of Rights because, on direct examination, a reviewing analyst testified about the findings and conclusions of a nontestifying analyst concerning deoxyribonucleic acid (DNA) testing. The Commonwealth acknowledges, and we agree, that the testimony was admitted in error. See [Commonwealth v. Greineder](#), 464 Mass. 580, 592, 984 N.E.2d 804, cert. denied, 571 U.S. 865, 134 S.Ct. 166, 187 L.Ed.2d 114 (2013). But we conclude that the error did not result in a substantial risk of a miscarriage of justice in the circumstances of this case. Second, the defendant argues that the judge abused his discretion in admitting evidence that the defendant had sexually assaulted the victim on an earlier occasion. We conclude that the judge acted within the permissible bounds of his discretion in admitting the prior bad act evidence. We accordingly affirm the judgments.¹

Background. We summarize the facts as the jury could have found them, reserving additional facts for our later discussion of the issues on appeal. The victim immigrated to the United States ***3** from Cape Verde when she was eleven years old. She initially lived in Chelsea with her mother, her brother, and the defendant (who was her maternal grandfather). One year later, the family moved to Taunton, where the Department of Children and Families (DCF) became involved with the family after a report that the victim's mother had physically abused her.

When the victim was twelve years old and the defendant was fifty-eight, the defendant took her into his bedroom while her mother was out of the house. The defendant put the victim on his bed, touched the victim's breasts, pulled down her pajama pants and underwear, and rubbed his penis against her

vagina. He inserted his penis in her “butthole where I poop.” He also digitally penetrated the victim's vagina, and used his fingers to spread the “lips thing” of her vagina in order to penetrate her with his penis. After the victim began to cry, the defendant removed his penis from the victim's vagina, and she saw “white things start[] coming out of his penis” onto the bedding. The defendant then sent the victim to her **1290 mother's room and told her not to tell anyone what had happened.

A few days later, a DCF social worker visited the victim's home as part of her ongoing involvement with the family due to the mother's reported physical abuse of the victim. The social worker, whom the Commonwealth called as the first complaint witness, testified that in response to a general inquiry into her well-being, the victim said that the defendant was “touching” her. This information was immediately reported to the Taunton police, who came to the house and spoke with both the victim and the social worker. The victim told police about the defendant's ejaculation onto the bedding, and based on this information, the police collected the bedding and sent it to be tested by the State police crime laboratory (crime lab). That testing confirmed the presence of the defendant's DNA in at least one sperm sample obtained from the bedding, and excluded the victim as a contributor to either of the two unknown DNA profiles obtained from the bedding.

The defense at trial, as expressed in trial counsel's closing argument and developed through cross-examination, was that the DNA evidence contradicted the victim's testimony and supported his theory that the victim had fabricated the assault after having seen the defendant having intercourse with his girlfriend. The prosecutor's closing, while acknowledging the absence of the victim's DNA on the bedding, nonetheless asked the jury to credit the victim's testimony concerning the assault.

*4 The jury convicted the defendant of two counts of aggravated rape of a child, *G. L. c. 265, § 23A*, and three counts of indecent assault and battery on a child under fourteen years old, *G. L. c. 265, § 13B*. The defendant filed a timely notice of appeal, and we transferred the case on our own initiative from the Appeals Court.

Discussion. 1. Confrontation clause. Before reaching the substance of the defendant's argument that admitting the DNA evidence violated his confrontation rights, we set out the pertinent background bearing on this claim.

Prior to trial, the Commonwealth moved to exclude any evidence concerning the DNA obtained from the bedding. As grounds for the motion, the Commonwealth asserted that testing had determined that a semen stain on the bedding was consistent with the defendant's DNA profile, but that a female DNA profile located on the bedding did not “match” the victim's DNA. The Commonwealth contended that the fact that the defendant was sexually active with someone else was irrelevant to whether he had raped the victim and, therefore, the DNA evidence should be excluded.

In the parties' joint pretrial memorandum, the Commonwealth identified Kira Snyder of the crime lab as a potential witness. Snyder was the analyst who tested and analyzed the DNA obtained from the defendant's bedding and prepared a report containing the results of the testing and her conclusions. By the time of trial, however, Snyder (for reasons that are not disclosed in the record) was unavailable to testify. Although the record does not explicitly reveal how or when, it is apparent that by the time of trial defense counsel had been notified of Snyder's unavailability and of the Commonwealth's proposal to substitute Jessica Hart, who was Snyder's supervisor and had performed the technical review of Snyder's report. See *Commonwealth v. Souza*, 494 Mass. 705, 718-719, 242 N.E.3d 552 (2024) (describing role of technical reviewer).

The defendant did not object to Hart being substituted to testify in lieu of Snyder. **1291 Indeed, it was defense counsel who notified the judge of the substitution and stated that he anticipated calling Hart to testify on behalf of the defendant were the Commonwealth not to call her in its case-in-chief. The judge denied the Commonwealth's motion to exclude the DNA evidence.

As it turned out, it was the Commonwealth—not the defendant—who called Hart to testify, and the defendant did not object either to her substitution for Snyder or to her testimony in any respect. On direct examination, Hart testified concerning her role *5 as the technical reviewer, explaining that she reviewed Snyder's file to ensure that “everything worked as it should have” with respect to the steps that were taken and the controls that were used. She also checked the comparisons made to known DNA standards and the accuracy of the statistics in Snyder's report. As she put it, Hart checked to make sure that “all of the information that is being reported both in the case file and the report is accurate and has followed all of our policies and procedures of the

lab.” Also on direct examination, Hart was asked to explain DNA terminology and scientific concepts in general, and to describe the customary procedures and protocols of the crime lab.

Hart did not herself conduct any DNA testing or analysis. Nonetheless, the prosecutor on direct examination elicited from Hart the information, results, and conclusions contained in Snyder's report. More specifically, the prosecutor elicited testimony that Snyder's report referenced that (1) two swabs and scraping items and two cutting items had been taken from the defendant's bedding, (2) those samples tested positive for blood and semen, (3) Snyder had determined that the DNA on the bedding “matched” the defendant, and (4) the expected frequency of occurrence of the male DNA profile located on the bedding was one in 12.06 decillion unrelated individuals in the general population. Hart also testified that Snyder excluded the victim as a source of the DNA located on the bedding. Hart offered no independent opinion of her own concerning the DNA testing or results. Instead, she relayed Snyder's testing, analyses, and conclusions as they were contained in Snyder's report, which Hart appears to have consulted throughout her testimony on direct examination.

On cross-examination, defense counsel first established that Snyder's report included results that had been validated using a new technology to retest the original results excluding the victim as a match for the DNA on the bedding. With that fact established, defense counsel asked that Snyder's report be admitted in evidence. The prosecutor objected on the ground that the report was inadmissible hearsay. After hearing from both sides, the judge admitted the report.

Defense counsel then spent the remainder of his cross-examination highlighting the conclusions of the report, focusing especially on the fact that the victim's DNA was excluded as a contributor to the two unknown DNA profiles located on the bedding. The prosecutor conducted no redirect examination of Hart.

6 [1]** For the first time on appeal, the defendant argues that Hart's testimony concerning the contents of Snyder's report violated his rights under the Sixth Amendment and art. 12 to confront the witnesses against him. See [Bullcoming v. New Mexico](#), 564 U.S. 647, 657-658, 131 S.Ct. 2705, 180 L.Ed.2d 610 (2011); [Melendez-Diaz v. Massachusetts](#), 557 U.S. 305, 309, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009); [Commonwealth v. Seino](#), 479 Mass. 463, 467, 96 N.E.3d 149 (2018). The argument was not preserved below, see *1292**

[Melendez-Diaz](#), 557 U.S. at 314 n.3, 129 S.Ct. 2527 (right to confrontation may be waived), and, therefore, we review to determine whether there was error and, if so, whether it resulted in a substantial risk of a miscarriage of justice, see [Commonwealth v. Curran](#), 488 Mass. 792, 796, 178 N.E.3d 399 (2021) (standard of review of unpreserved confrontation clause claim). A substantial risk of a miscarriage of justice occurs when we have a “serious doubt whether the result of the trial might have been different had the error not been made.” [Commonwealth v. Valentin](#), 470 Mass. 186, 189, 23 N.E.3d 61 (2014), quoting [Commonwealth v. Azar](#), 435 Mass. 675, 687, 760 N.E.2d 1224 (2002), [S.C.](#), 444 Mass. 72, 825 N.E.2d 999 (2005).

[2] [3] [4] The Commonwealth acknowledges, and we agree, that Hart's testimony on direct examination concerning the contents of Snyder's report was erroneously admitted.² See [Greineder](#), 464 Mass. at 592, 984 N.E.2d 804. Since well before 2022, when the trial in this case took place, this court has held that “an expert witness is not permitted to testify on direct examination to facts or data that another, nontestifying expert has generated, or to the nontestifying expert's own opinion, even though this information may be an important part of the basis of the testifying expert's opinion.” [Commonwealth v. Chappell](#), 473 Mass. 191, 202, 40 N.E.3d 1031 (2015). As we explained in [Greineder](#), 464 Mass. at 592, 984 N.E.2d 804, under our law of evidence, “an expert's testimony to the fact of a nontestifying analyst's test results is hearsay,” and “we do not allow expert witnesses to testify to the specifics of hearsay information underlying the opinion on direct examination.” See [Department of Youth Servs. v. A Juvenile](#), 398 Mass. 516, 531, 499 N.E.2d 812 (1986). Snyder's report was not only hearsay, it was also testimonial; the report was prepared for use in connection with this prosecution. See [Melendez-Diaz](#), 557 U.S. at 324, 129 S.Ct. 2527 (hearsay statements are testimonial where prepared specifically for use at defendant's trial). Accordingly, Hart should not have been permitted to testify on direct examination to Snyder's testing, findings, analyses, or ***7** conclusions where the defendant did not have the opportunity to cross-examine Snyder beforehand. [Id.](#) at 309, 129 S.Ct. 2527. [Bullcoming](#), 564 U.S. at 657-658, 131 S.Ct. 2705.

Because we conclude that Hart's testimony on direct examination concerning the contents of Snyder's report was erroneously admitted under our law as it existed at the time of trial, we need not reach the defendant's argument that the same result follows under the United States Supreme Court's

recent decision in [Smith v. Arizona](#), 602 U.S. 779, 144 S.Ct. 1785, 219 L.Ed.2d 420 (2024), which was decided after the trial in this case.

[5] [6] What remains is whether the error resulted in a substantial risk of a miscarriage of justice. [Commonwealth v. Grady](#), 474 Mass. 715, 721-722, 54 N.E.3d 22 (2016). To evaluate that question, we assess the case as a whole and “consider the strength of the Commonwealth’s case, the nature of the error, the significance of the error in the context of the trial, and the possibility that the absence of an objection was the result of a reasonable tactical decision.” [Azar](#), 435 Mass. at 687, 760 N.E.2d 1224. This case turned entirely on the jury’s assessment of the victim’s credibility, and the DNA evidence did not wholly buttress her account—a fact helpful to the ****1293** defense. Cf. [Commonwealth v. Gonzalez Santos](#), 100 Mass. App. Ct. 1, 6, 173 N.E.3d 776 (2021) (victim’s testimony alone, if believed by jury, sufficient to support conviction of rape of child and indecent assault and battery on child under age of fourteen). In light of this, defense counsel’s sensible strategy was to get Snyder’s report admitted, given the importance of its findings and conclusions to the theory of defense. Indeed, in his closing argument, defense counsel emphasized that “[t]he DNA evidence shows it was not [the victim] in [the defendant’s] bedroom. The science is not interested in any party, the science is the science. The science said the female DNA was not [the victim’s] and I ask you to find the defendant ... not guilty.”

The lack of DNA corroboration was of particular value to the defendant because it undermined the victim’s credibility. The victim’s testimony otherwise bore many indicia of reliability. Specifically, the victim’s account of events remained consistent from her first report to DCF through the time of trial. Her testimony about the assault and the circumstances surrounding it was detailed and precise. For example, she recalled the name of the television show she and her brother were watching when the defendant called her into his bedroom, her brother’s reaction to being interrupted, and the reason why her mother was out of the ***8** house that day. Furthermore, the language the victim used to describe the assault was consistent with the understanding and vocabulary of a child, permitting the inference that it was not influenced by an adult, contrived, or otherwise manufactured.

In short, taking the error in the context of the trial as a whole, it did not result in a substantial risk of a miscarriage of justice. [Grady](#), 474 Mass. at 721-722, 54 N.E.3d 22.

2. **Prior bad acts.** The defendant argues that the judge abused his discretion in allowing the victim to testify that the defendant had touched her inappropriately when the family lived in Chelsea. Specifically, the victim testified that while living in Chelsea, the defendant “started playing touching private parts” and put his hands on her stomach, breasts, and buttocks. The judge admitted the testimony on the ground that it would shed light on the relationship between the victim and the defendant.³

[7] The defendant argues that the evidence should not have been admitted, particularly without a limiting instruction (which the defendant never requested). We review to determine whether the judge abused his discretion in admitting the evidence, see [Commonwealth v. Rutherford](#), 476 Mass. 639, 649, 71 N.E.3d 481 (2017), and “[w]e do not overturn a trial judge’s decision on these issues absent a clear error of judgment in weighing the relevant factors.” *Id.* We see no such error here.

[8] [9] Evidence of a defendant’s prior bad acts is not admissible to show “bad ****1294** character or criminal propensity.” [Commonwealth v. Lally](#), 473 Mass. 693, 712, 46 N.E.3d 41 (2016), quoting [Commonwealth v. Holliday](#), 450 Mass. 794, 815, 882 N.E.2d 309, cert. denied sub nom. [Mooltrey v. Massachusetts](#), 555 U.S. 947, 129 S.Ct. 399, 172 L.Ed.2d 292 (2008). It may be admitted, however, where it is relevant for a nonpropensity purpose, such as to show “a common scheme, pattern of operation, absence of accident ***9** or mistake, identity, intent, or motive.” [Commonwealth v. Hel-fant](#), 398 Mass. 214, 224, 496 N.E.2d 433 (1986). See [Mass. G. Evid. § 404\(b\)\(2\)](#) (2025). Where a defendant is charged with sexual assault, “some evidence of [similar] uncharged conduct may be admissible to give the jury a view of the entire relationship between the defendant and the alleged victim, and the probative existence of the same passion or emotion at the time in issue” (quotation and citation omitted). [Commonwealth v. Dwyer](#), 448 Mass. 122, 128-129, 859 N.E.2d 400 (2006). However, such evidence should not be admitted if its probative value is outweighed by the risk of unfair prejudice to the defendant. See [Commonwealth v. Crayton](#), 470 Mass. 228, 249, 21 N.E.3d 157 (2014). See also [Mass. G. Evid. § 404\(b\)\(2\)](#).

[10] The judge did not abuse his discretion by allowing the victim’s brief testimony concerning the defendant’s prior bad acts. The evidence was probative: the conduct involved the same child victim, took place in the same setting (the family home), and occurred relatively close in time to the charged

conduct. See [Commonwealth v. Barrett](#), 418 Mass. 788, 794, 641 N.E.2d 1302 (1994). See also [Commonwealth v. King](#), 387 Mass. 464, 470, 441 N.E.2d 248 (1982). It shed light on the relationship between the defendant and the victim. At the same time, the risk of prejudice was slight given the prosecutor's limited inquiry into the subject (only four questions) and the testimony's lack of detail. Moreover, the prosecutor referred to the evidence only briefly in closing to argue a pattern of escalating conduct. Contrast [Dwyer](#), 448 Mass. at 128, 859 N.E.2d 400 (jury were provided with detailed evidence of seven uncharged acts of sexual abuse by defendant, and more time was spent on both direct and cross-examination exploring those prior bad acts than crimes charged).

[11] [12] While admitting that there is no requirement that a judge sua sponte give a limiting instruction, the defendant nonetheless asks that he receive a new trial because the judge did not deliver one. We have never required a judge to give a limiting instruction in the absence of a request for one, and see no reason to create such a rule in this

case. See [Commonwealth v. Bradshaw](#), 385 Mass. 244, 270, 431 N.E.2d 880 (1982) (“[T]he defendant requested no limiting instruction to protect himself against any prejudice he perceived, either when the other crimes evidence was introduced or when the charge was given. In this situation, the judge was not required on his own to instruct the jury as to the purpose for which the evidence was offered”). In any event, given the limited nature of the testimony and the fact that the prosecutor confined his argument *10 concerning the evidence to a permissible use, admission of the evidence without a limiting instruction was within the bounds of the judge's discretion.

Conclusion. For the reasons set out above, the judgments are affirmed.

So ordered.

All Citations

496 Mass. 1, 256 N.E.3d 1286

Footnotes

- 1 We acknowledge the amicus brief submitted by Elana Gordon.
- 2 The defendant does not challenge Hart's testimony concerning the policies and procedures employed in the crime lab about which she had firsthand knowledge. See [Smith v. Arizona](#), 602 U.S. 779, 799, 144 S.Ct. 1785, 219 L.Ed.2d 420 (2024).
- 3 The parties dispute whether the defendant preserved his objection. Although he filed a motion in limine to exclude prior bad act evidence, the motion concerned conduct allegedly involving a different victim. This motion was never acted on and, in any event, no such evidence was offered or admitted.

At a sidebar conference that took place during the victim's testimony, defense counsel told the judge that he reserved the right to object to prior bad act evidence depending on what the prosecutor sought to elicit. The prosecutor said that he intended to elicit the testimony only to show a pattern of grooming. Ultimately, at no point during the victim's testimony did defense counsel lodge an objection.

We need not resolve whether the argument the defendant raises on appeal was properly preserved below because, in any event, we conclude the judge did not abuse his discretion in admitting the evidence.

1873CR00436 Commonwealth vs. Nascimento-Depina, Antonio B

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 11/29/2018
- DCM Track:
- C - Most Complex
- Initiating Action:
- RAPE OF CHILD, AGGRAVATED, TEN YEAR AGE DIFFERENCE c265 §23A
- Status Date:
- 12/11/2018
- Case Judge:
-
- Next Event:
-

[All Information](#) [Party](#) [Charge](#) [Event](#) [Tickler](#) [Docket](#) [Disposition](#)

Party Information

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Nascimento-Depina, Antonio B
- Defendant

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Party Charge Information

- **Nascimento-Depina, Antonio B**

- - Defendant

- **Charge # 1:**

- **265/23A/B-1 - Felony** RAPE OF CHILD, AGGRAVATED, TEN YEAR AGE DIFFERENCE c265 §23A

- Original Charge

- 265/23A/B-1 RAPE OF CHILD, AGGRAVATED, TEN YEAR AGE DIFFERENCE c265 §23A (Felony)

- Indicted Charge

- Amended Charge

- **Charge Disposition**

- Disposition Date

- Disposition

- 08/09/2022

- Guilty Verdict

- **Nascimento-Depina, Antonio B**

- - Defendant

- **Charge # 2:**

- **265/23A/B-1 - Felony** RAPE OF CHILD, AGGRAVATED, TEN YEAR AGE DIFFERENCE c265 §23A

- Original Charge

- 265/23A/B-1 RAPE OF CHILD, AGGRAVATED, TEN YEAR AGE DIFFERENCE c265 §23A (Felony)

- Indicted Charge

- Amended Charge

- **Charge Disposition**

- Disposition Date

- Disposition

- 08/09/2022

- Guilty Verdict

- **Nascimento-Depina, Antonio B**

- - Defendant

- **Charge # 3:**

- **265/13B/A-5 - Felony** INDECENT A&B ON CHILD UNDER 14 c265 §13B

- Original Charge

- 265/13B/A-5 INDECENT A&B ON CHILD UNDER 14 c265 §13B (Felony)

- Indicted Charge

- Amended Charge

- **Charge Disposition**

- Disposition Date

- Disposition

- 08/09/2022

- Guilty Verdict

- **Nascimento-Depina, Antonio B**

- - Defendant

- **Charge # 4:**

- **265/13B/A-5 - Felony** INDECENT A&B ON CHILD UNDER 14 c265 §13B

- Original Charge

- 265/13B/A-5 INDECENT A&B ON CHILD UNDER 14 c265 §13B (Felony)

- Indicted Charge

- Amended Charge

- **Charge Disposition**

- Disposition Date

- Disposition

- 08/09/2022

- Guilty Verdict

- **Nascimento-Depina, Antonio B**

- - Defendant

- **Charge # 5:**

- **265/13B/A-5 - Felony** INDECENT A&B ON CHILD UNDER 14 c265 §13B

- Original Charge

- 265/13B/A-5 INDECENT A&B ON CHILD UNDER 14 c265 §13B (Felony)

- Indicted Charge

- Amended Charge

Charge Disposition

Disposition Date

Disposition

08/09/2022

Guilty Verdict

Events

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
12/10/2018 09:00 AM	Criminal 1 (Fall River)	Courtroom 9	Arraignment	Hallal, Hon. Mark A	Rescheduled
12/11/2018 09:00 AM	Criminal 1 (Fall River)	Courtroom 9	Arraignment	Hallal, Hon. Mark A	Held as Scheduled
12/18/2018 09:00 AM	Criminal 1 (Fall River)	Courtroom 9	58A Dangerousness Hearing	Hallal, Hon. Mark A	Held - Under advisement
02/07/2019 11:00 AM	Criminal 1 (Fall River)	Courtroom 8	Pre-Trial Conference	Yessayan, Hon. Raffi N	Not Held
02/26/2019 11:00 AM	Criminal 1 (Fall River)	Courtroom 8	Hearing RE: Discovery Motion(s)	Yessayan, Hon. Raffi N	Held as Scheduled
04/04/2019 11:00 AM	Criminal 1 (Fall River)	Courtroom 8	Hearing RE: Discovery Motion(s)	Dupuis, Hon. Renee P	Held as Scheduled
06/14/2019 11:00 AM	Criminal 1 (Fall River)	Courtroom 8	Pre-Trial Hearing	Dupuis, Hon. Renee P	Held as Scheduled
07/22/2019 11:00 AM	Criminal 1 (Fall River)	Courtroom 8	Pre-Trial Hearing	Donatelle, Hon. Sharon	Held as Scheduled
08/07/2019 11:00 AM	Criminal 1 (Fall River)	Courtroom 8	Hearing RE: Discovery Motion(s)	Donatelle, Hon. Sharon	Held as Scheduled
08/23/2019 11:00 AM	Criminal 1 (Fall River)	Courtroom 8	Hearing RE: Discovery Motion(s)	Donatelle, Hon. Sharon	Held as Scheduled
08/27/2019 11:00 AM	Criminal 1 (Fall River)	Courtroom 8	Motion Hearing	McGuire, Jr., Hon. Thomas F	Held as Scheduled
11/07/2019 11:00 AM	Criminal 1 (Fall River)	Courtroom 8	Hearing on Compliance	McGuire, Jr., Hon. Thomas F	Held as Scheduled
12/12/2019 11:00 AM	Criminal 1 (Fall River)	Courtroom 8	Hearing on Compliance	McGuire, Jr., Hon. Thomas F	Held as Scheduled
03/27/2020 09:00 AM	Criminal 3 (Fall River)	Courtroom 6	Final Pre-Trial Conference	Sullivan, Hon. William F	Rescheduled-Covid-19 emergency
04/06/2020 09:00 AM	Criminal 3 (Fall River)	Courtroom 6	Jury Trial	McGuire, Jr., Hon. Thomas F	Rescheduled-Covid-19 emergency
05/22/2020 09:00 AM	Criminal 3 (Fall River)	Courtroom 6	Final Pre-Trial Conference	McGuire, Jr., Hon. Thomas F	Canceled
06/29/2020 09:00 AM	Criminal 3 (Fall River)	Courtroom 6	Jury Trial	McGuire, Jr., Hon. Thomas F	Canceled
06/29/2020 10:00 AM	Criminal 3 (Fall River)	Courtroom 6	Trial Assignment Conference	McGuire, Jr., Hon. Thomas F	Rescheduled
06/29/2020 11:00 AM	Criminal 1 (Fall River)	Courtroom 8	Trial Assignment Conference	Dupuis, Hon. Renee P	Held via Video/Teleconference
11/06/2020 09:00 AM	Criminal 3 (Fall River)	Courtroom 6	Final Pre-Trial Conference	Yessayan, Hon. Raffi N	Canceled
11/06/2020 11:00 AM	Criminal 3 (Fall River)	Courtroom 6	Trial Assignment Conference	Yessayan, Hon. Raffi N	Held via Video/Teleconference
11/16/2020 09:00 AM	Criminal 3 (Fall River)	Courtroom 6	Jury Trial	Yessayan, Hon. Raffi N	Canceled
03/02/2021 09:00 AM	Criminal 1 (Fall River)	Courtroom 8	Motion Hearing to Modify Probation Term/Conditions	Yessayan, Hon. Raffi N	Held via Video/Teleconference
04/15/2021 09:00 AM	Criminal 3 (Fall River)	Courtroom 6	Final Pre-Trial Conference	Dupuis, Hon. Renee P	Held via Video/Teleconference
04/23/2021 09:00 AM	Criminal 3 (Fall River)		Final Pre-Trial Conference		Rescheduled

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
04/23/2021 09:00 AM	Criminal 1 (Fall River)	Courtroom 8	Final Pre-Trial Conference	Perrino, Hon. Thomas J	Rescheduled
04/23/2021 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Final Pre-Trial Conference	Cosgrove, Hon. Robert C	Rescheduled
04/27/2021 09:00 AM	Criminal 3 (Fall River)	Courtroom 6	Final Pre-Trial Conference	Dupuis, Hon. Renee P	Rescheduled
05/10/2021 09:00 AM	Criminal 3 (Fall River)		Jury Trial		Rescheduled
05/10/2021 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Jury Trial	Cosgrove, Hon. Robert C	Rescheduled
05/10/2021 09:00 AM	Criminal 1 (Fall River)	Courtroom 8	Jury Trial	Perrino, Hon. Thomas J	Rescheduled
07/30/2021 09:00 AM	Criminal 3 (Fall River)	Courtroom 6	Hearing on Motion(s) in Limine	Dupuis, Hon. Renee P	Not Held
08/13/2021 09:00 AM	Criminal 3 (Fall River)	Courtroom 6	Hearing on Motion to Continue	Dupuis, Hon. Renee P	Held as Scheduled
08/16/2021 09:00 AM	Criminal 3 (Fall River)	Courtroom 6	Jury Trial	Cosgrove, Hon. Robert C	Rescheduled
09/10/2021 02:00 PM	Criminal 3 (Fall River)	Courtroom 6	Final Pre-Trial Conference	Dupuis, Hon. Renee P	Held as Scheduled
09/13/2021 09:00 AM	Criminal 3 (Fall River)	Courtroom 6	Jury Trial	Cosgrove, Hon. Robert C	Rescheduled
12/07/2021 02:00 PM	Criminal 3 (Fall River)	Courtroom 6	Final Pre-Trial Conference	Yessayan, Hon. Raffi N	Canceled
12/13/2021 09:00 AM	Criminal 3 (Fall River)	Courtroom 6	Jury Trial	Cosgrove, Hon. Robert C	Rescheduled
12/20/2021 09:00 AM	Criminal 3 (Fall River)	Courtroom 6	Trial Assignment Conference	Yessayan, Hon. Raffi N	Held as Scheduled
02/11/2022 02:00 PM	Criminal 2 (Fall River)	Courtroom 7	Status Review	Pasquale, Hon. Gregg J	Held as Scheduled
02/28/2022 09:00 AM	Criminal 2 (Fall River)	Courtroom 7	Jury Trial	Pasquale, Hon. Gregg J	Rescheduled
03/03/2022 09:00 AM	Criminal 2 (Fall River)	Courtroom 7	Trial Assignment Conference	Pasquale, Hon. Gregg J	Rescheduled
03/16/2022 02:00 PM	Criminal 2 (Fall River)	Courtroom 7	Trial Assignment Conference	Pasquale, Hon. Gregg J	Held as Scheduled
06/24/2022 09:00 AM	Criminal 2 (Fall River)	Courtroom 7	Final Pre-Trial Conference	Dupuis, Hon. Renee P	Rescheduled
06/24/2022 09:00 AM	Criminal 2 (Fall River)	Courtroom 7	Violation of Probation Hearing	Dupuis, Hon. Renee P	Not Held
07/11/2022 09:00 AM	Criminal 2 (Fall River)	Courtroom 7	Jury Trial	Leighton, Hon. Joseph	Rescheduled
07/15/2022 02:00 PM	Criminal 2 (Fall River)	Courtroom 7	Final Pre-Trial Conference	O'Shea, Hon. Daniel J.	Held as Scheduled
07/21/2022 09:00 AM	Criminal 2 (Fall River)	Courtroom 7	Hearing on Motion(s) in Limine	O'Shea, Hon. Daniel J.	Held as Scheduled
08/01/2022 09:00 AM	Criminal 2 (Fall River)	Courtroom 7	Jury Trial	O'Shea, Hon. Daniel J.	Held as Scheduled
08/03/2022 09:00 AM	Criminal 2 (Fall River)	Courtroom 7	Jury Trial	O'Shea, Hon. Daniel J.	Held as Scheduled
08/04/2022 09:00 AM	Criminal 2 (Fall River)	Courtroom 7	Jury Trial	O'Shea, Hon. Daniel J.	Held as Scheduled
08/05/2022 09:00 AM	Criminal 2 (Fall River)	Courtroom 7	Jury Trial	O'Shea, Hon. Daniel J.	Held as Scheduled
08/08/2022 09:00 AM	Criminal 2 (Fall River)	Courtroom 7	Jury Trial	O'Shea, Hon. Daniel J.	Held as Scheduled
08/09/2022 09:00 AM	Criminal 2 (Fall River)	Courtroom 7	Jury Trial	O'Shea, Hon. Daniel J.	Held as Scheduled

Ticklers

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Pre-Trial Hearing	12/11/2018	06/07/2019	178	06/14/2019
Final Pre-Trial Conference	12/12/2018	11/22/2019	345	05/08/2020
Case Disposition	12/11/2018	12/06/2019	360	08/09/2022
Under Advisement	12/18/2018	01/17/2019	30	12/20/2018

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
11/29/2018	Indictment(s) returned	1	Image
11/29/2018	Attorney appearance On this date 11/30/2018 Friedel, Esq., Matthew H added for Bristol County District Attorney		
12/10/2018	Event Result:: Arraignment scheduled on: 12/10/2018 09:00 AM Has been: Rescheduled For the following reason: Interpreter Did Not Show Comments: Not requested Hon. Mark A Hallal, Presiding Appeared: Prosecutor Matthew H Friedel, Esq., Defendant Antonio B Nascimento-Depina Staff: Valerie A Brodeur, Assistant Clerk Magistrate Mark A Ferriera, Assistant Clerk Magistrate Erin J Tierney, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter 12/10/2018 09:00 AM		
12/10/2018	Commonwealth 's Motion for Order of Pre-Trial Detention.	2	Image
12/11/2018	Event Result:: Arraignment scheduled on: 12/11/2018 09:00 AM Has been: Held as Scheduled Hon. Mark A Hallal, Presiding Appeared: Prosecutor Matthew H Friedel, Esq., Defendant Antonio B Nascimento-Depina Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Valerie A Brodeur, Assistant Clerk Magistrate Mark A Ferriera, Assistant Clerk Magistrate Erin J Tierney, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter 12/11/2018 09:00 AM		
12/11/2018	Attorney appearance On this date Anthony R Mastromarino, Jr., Esq. added as Appointed - Indigent Defendant for Defendant Antonio B Nascimento-Depina Appointment made for the purpose of Case in Chief by Judge Hon. Mark A Hallal.		
12/11/2018	Case assigned to: DCM Track C - Most Complex was added on 12/12/2018		Image
12/11/2018	Defendant arraigned before Court. Judge: Hallal, Hon. Mark A		
12/11/2018	Defendant waives reading of indictment Judge: Hallal, Hon. Mark A		
12/11/2018	Plea of not guilty entered on all charges. Judge: Hallal, Hon. Mark A		
12/11/2018	Commonwealth 's Motion for Court Order Re: Discovery of Videotapes.	3	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
12/11/2018	Endorsement on Motion for Court Order Re: Discovery of Videotapes, (#3.0): ALLOWED by agreement. Judge: Hallal, Hon. Mark A		Image
12/11/2018	Scheduled: Judge: Hallal, Hon. Mark A Event: Bail (58A) Date: 12/18/2018 Time: 09:00 AM Result: Held - Under advisement		
12/11/2018	The defendant\petitioner is committed without bail for the following reason: Pending dangerousness hearing.	4	Image
12/12/2018	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Anthony R Mastromarino, Jr., Esq. Attorney: Matthew H Friedel, Esq.		
12/18/2018	Matter taken under advisement: Bail (58A) scheduled on: 12/18/2018 09:00 AM Has been: Held - Under advisement Hon. Mark A Hallal, Presiding Appeared: Prosecutor Matthew H Friedel, Esq., Defendant Antonio B Nascimento-Depina Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Valerie A Brodeur, Assistant Clerk Magistrate Mark A Ferriera, Assistant Clerk Magistrate Erin J Tierney, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter 12/18/2018 09:00 AM		
12/18/2018	List of exhibits (58A hearing)	5	Image
12/20/2018	Findings and Order on Motion for Detention pursuant to G.L. c. 276 § 58A. Judge: Hallal, Hon. Mark A	6	Image
12/20/2018	Bail set at \$150,000.00 Surety, \$15,000.00 Cash. NOT TO BE RELEASE WITHOUT GPS DEFT ONLY TO BE BAILED AT COURT and with special conditions upon release		
12/20/2018	Issued on this date: Mittimus in Lieu of Bail Sent On: 12/20/2018 14:23:33	7	Image
01/08/2019	Sent to Registry of Motor Vehicles, Department of Revenue and Department of Transitional Assistance: Notice of Unpaid Legal Counsel Fees Sent On: 01/08/2019 14:28:17		
01/17/2019	Defendant 's Motion for DNA Discovery	8	Image
01/17/2019	Defendant 's Motion Rule 17 Summons Issue, with accompanying affidavit in support thereof	9	Image
01/17/2019	Defendant 's Motion for funds to Hire an Expert, with accompanying affidavit in support thereof	10	Image
01/17/2019	Defendant 's Motion for Funds for Investigator (\$750.00)	11	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/07/2019	Event Result:: Pre-Trial Conference scheduled on: 02/07/2019 11:00 AM Has been: Not Held For the following reason: Defendant not transported to event Comments: Defendant refused to be transported Hon. Raffi N Yessayan, Presiding Appeared: Prosecutor Matthew H Friedel, Esq., Defendant Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Valerie A Brodeur, Assistant Clerk Magistrate Erin J Tierney, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter 02/07/2019 11:00 AM		
02/07/2019	Endorsement on Motion for Funds to Hire an Expert,, (#10.0): ALLOWED		Image
02/07/2019	Endorsement on Motion for Funds for Investigator, (#11.0): ALLOWED Judge: Yessayan, Hon. Raffi N		Image
02/08/2019	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Anthony R Mastromarino, Jr., Esq. Attorney: Matthew H Friedel, Esq.		
02/08/2019	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Anthony R Mastromarino, Jr., Esq. Attorney: Matthew H Friedel, Esq.		
02/26/2019	Event Result:: Hearing RE: Discovery Motion(s) scheduled on: 02/26/2019 11:00 AM Has been: Held as Scheduled Hon. Raffi N Yessayan, Presiding Appeared: Staff: Valerie A Brodeur, Assistant Clerk Magistrate Erin J Tierney, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter 02/26/2019 11:00 AM		
03/08/2019	Defendant 's Motion for Discovery	12	Image
04/04/2019	Event Result:: Hearing RE: Discovery Motion(s) scheduled on: 04/04/2019 11:00 AM Has been: Held as Scheduled Hon. Renee P Dupuis, Presiding Appeared: Prosecutor Matthew H Friedel, Esq., Defendant Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Valerie A Brodeur, Assistant Clerk Magistrate Erin J Tierney, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter 04/04/2019 11:00 AM		
04/04/2019	Endorsement on Motion for Rule 17 Summons Issue, (#9.0): ALLOWED Order to issue.		Image
04/08/2019	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Anthony R Mastromarino, Jr., Esq. Attorney: Matthew H Friedel, Esq.		
04/08/2019	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Anthony R Mastromarino, Jr., Esq. Attorney: Matthew H Friedel, Esq.		
04/08/2019	Endorsement on Motion for Discovery, (#12.0): Other action taken Agreed as to everything except number 1 which the Commonwealth will try to obtain voluntarily if unable to do so reinstate summons will need to be sent. Judge: Dupuis, Hon. Renee P		Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/08/2019	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Anthony R Mastromarino, Jr., Esq. Attorney: Matthew H Friedel, Esq.		
04/09/2019	Notice and Summons (Dwyer) issued to Keeper of Records Santander Bank N.A. Attn: Court Order Process, to produce records by 06/07/2019 to the Clerk of the Superior Court. Judge: Dupuis, Hon. Renee P	13	Image
05/13/2019	Bank Recordsreceived from Santander	14	
06/14/2019	Event Result:: Pre-Trial Hearing scheduled on: 06/14/2019 11:00 AM Has been: Held as Scheduled Hon. Renee P Dupuis, Presiding Appeared: Prosecutor Matthew H Friedel, Esq., Defendant Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Valerie A Brodeur, Assistant Clerk Magistrate Erin J Tierney, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter 06/14/2019 11:00 AM		
06/14/2019	Defendant 's Motion for DNA Discovery	15	Image
07/22/2019	Event Result:: Pre-Trial Hearing scheduled on: 07/22/2019 11:00 AM Has been: Held as Scheduled Valerie A Brodeur, Presiding Appeared: Prosecutor Matthew H Friedel, Esq., Defendant Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Valerie A Brodeur, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
07/22/2019	Commonwealth 's Motion for Order Compelling Defendant to Provide D.N.A. Sample and Affidavit in support.	16	Image
07/22/2019	ORDER: of GPS Supervision Conditions. Judge: Donatelle, Hon. Sharon	17	Image
08/07/2019	Event Result:: Hearing RE: Discovery Motion(s) scheduled on: 08/07/2019 11:00 AM Has been: Held as Scheduled Comments: Attorney Friedel on trial. Defendant's presence waived in the courtroom Hon. Sharon Donatelle, Presiding Appeared: Prosecutor ADA Kristen Wiley standing in for ADA Friedel Defendant Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Valerie A Brodeur, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter 08/07/2019 11:00 AM		
08/07/2019	Opposition to to Commonwealth's Motion for Order Compelling Defendant to Provide DNA Sample. filed by	18	Image
08/07/2019	Endorsement on Motion for Order Compelling Defendant to Provide D.N.A. Sample, (#16.0): ALLOWED The sample taken shall be used only for this case. Cape Verdean interpreter needed to assist defendant. Judge: Donatelle, Hon. Sharon		Image
08/08/2019	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Anthony R Mastromarino, Jr., Esq. Attorney: Matthew H Friedel, Esq.		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/23/2019	Event Result:: Hearing RE: Discovery Motion(s) scheduled on: 08/23/2019 11:00 AM Has been: Held as Scheduled Erin Tierney, Presiding Appeared: Prosecutor Matthew H Friedel, Esq., Defendant Antonio B Nascimento-Depina Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Valerie A Brodeur, Assistant Clerk Magistrate Erin J Tierney, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter 08/23/2019 11:00 AM		
08/23/2019	Defendant 's Motion to Amend Conditions of Release	19	Image
08/27/2019	Event Result:: Motion Hearing scheduled on: 08/27/2019 11:00 AM Has been: Held as Scheduled Hon. Thomas F McGuire, Jr., Presiding Appeared: Prosecutor Matthew H Friedel, Esq., Defendant Antonio B Nascimento-Depina Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Cape Verdean Interpreter Aldina Perreira Staff: Erin J Tierney, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
08/27/2019	Endorsement on Motion to Modify Conditions of Release, (#19.0): ALLOWED Judge: McGuire, Jr., Hon. Thomas F		Image
08/27/2019	The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Antonio B Nascimento-Depina Attorney: Anthony R Mastromarino, Jr., Esq. Attorney: Matthew H Friedel, Esq.		
08/27/2019	ORDER: for Modification of Conditions of Pretrial Release. Judge: McGuire, Jr., Hon. Thomas F	20	Image
11/07/2019	Event Result:: Hearing on Compliance scheduled on: 11/07/2019 11:00 AM Has been: Held as Scheduled Hon. Thomas F McGuire, Jr., Presiding Appeared: Prosecutor Matthew H Friedel, Esq., Defendant Antonio B Nascimento-Depina Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
11/21/2019	Defendant 's Motion for Cape Verde Interpreter	21	Image
11/21/2019	Defendant 's Motion for Relief from GPS Home Confinement	22	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
12/12/2019	Event Result:: Hearing on Compliance scheduled on: 12/12/2019 11:00 AM Has been: Held as Scheduled Hon. Thomas F McGuire, Jr., Presiding Appeared: Prosecutor Matthew H Friedel, Esq., Defendant Antonio B Nascimento-Depina Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Portuguese Interpreter Bella Santos Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
12/12/2019	Document: Notice to Appear for Final Pretrial Sent On: 12/12/2019 12:50:32		
12/12/2019	Endorsement on Motion for Relief from GPS Home Confinement, (#22.0): ALLOWED Judge: McGuire, Jr., Hon. Thomas F		Image
12/12/2019	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Anthony R Mastromarino, Jr., Esq. Attorney: Matthew H Friedel, Esq.		
12/12/2019	ORDER: for Modification of Conditions of Pretrial Release Judge: McGuire, Jr., Hon. Thomas F	23	Image
03/27/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Final Pre-Trial Conference scheduled on: 03/27/2020 09:00 AM Has been: Rescheduled-Covid-19 emergency For the following reason: By Court due to Covid-19 Hon. William F Sullivan, Presiding Staff: Aaron T Strojny, Assistant Clerk Magistrate Digital Recording Device Bris CR3, Court Reporter		
03/31/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Jury Trial scheduled on: 04/06/2020 09:00 AM Has been: Rescheduled-Covid-19 emergency For the following reason: By Court due to Covid-19 Hon. Thomas F McGuire, Jr., Presiding Staff: Digital Recording Device Bris CR3, Court Reporter		
05/08/2020	Event Result:: Jury Trial scheduled on: 06/29/2020 09:00 AM Has been: Canceled For the following reason: By Court due to Covid-19 Hon. Thomas F McGuire, Jr., Presiding Staff: Digital Recording Device Bris CR3, Court Reporter		
06/18/2020	Event Result:: Trial Assignment Conference scheduled on: 06/29/2020 10:00 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. Thomas F McGuire, Jr., Presiding Staff: Digital Recording Device Bris CR3, Court Reporter		
06/29/2020	Event Result:: Trial Assignment Conference scheduled on: 06/29/2020 11:00 AM Has been: Held via Video Conference Hon. Renee P Dupuis, Presiding Staff: Digital Recording Device Bris CR 1, Court Reporter 06/29/2020 11:00 AM		
11/05/2020	Event Result:: Jury Trial scheduled on: 11/16/2020 09:00 AM Has been: Canceled For the following reason: By Court due to Covid-19 Hon. Raffi N Yessayan, Presiding Staff: Digital Recording Device Bris CR3, Court Reporter		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/06/2020	Event Result:: Trial Assignment Conference scheduled on: 11/06/2020 11:00 AM Has been: Held via Video Conference Hon. Raffi N Yessayan, Presiding Staff: Aaron T Strojny, Assistant Clerk Magistrate Digital Recording Device Bris CR3, Court Reporter		
11/06/2020	Document: Notice to Appear for Final Pretrial on April 23, 2021 at 9:00 a.m. in CR6 Sent On: 11/06/2020 14:17:01 Notice Sent To: Anthony R Mastromarino, Jr., Esq. Attorney and Counsellor at Law 1585 Somerset Ave, Taunton, MA 02780 Notice Sent To: Matthew H Friedel, Esq. Bristol County District Attorney's Office 218 S Main St, Fall River, MA 02721		
11/06/2020	The following form was generated: Notice to Appear for Trial on May 10, 2021 at 9:00 a.m. in CR6 Sent On: 11/06/2020 14:17:54 Notice Sent To: Anthony R Mastromarino, Jr., Esq. Attorney and Counsellor at Law 1585 Somerset Ave, Taunton, MA 02780 Notice Sent To: Matthew H Friedel, Esq. Bristol County District Attorney's Office 218 S Main St, Fall River, MA 02721		
12/30/2020	Defendant 's Motion for Permission to Change Address	24	Image
02/02/2021	Endorsement on Motion for permission to change address, (#24.0): Withdrawn without prejudice at Atty. Mastromarino's request Judge: Tierney, Erin		Image
02/05/2021	Event Result:: Final Pre-Trial Conference scheduled on: 04/23/2021 09:00 AM Has been: Rescheduled For the following reason: Request of Probation Aaron T Strojny, Presiding Staff: Digital Recording Device Bris CR3, Court Reporter		
02/05/2021	Event Result:: Jury Trial scheduled on: 05/10/2021 09:00 AM Has been: Rescheduled For the following reason: Transferred to another session Aaron T Strojny, Presiding Staff: Digital Recording Device Bris CR3, Court Reporter		
02/05/2021	Scheduled: Judge: Perrino, Hon. Thomas J Event: Jury Trial Date: 05/10/2021 Time: 09:00 AM Result: Rescheduled		
02/10/2021	Pro Se Defendant 's Motion to Change his Address (Second)	25	Image
02/16/2021	Defendant 's Motion (Second) for Relief of GPS Condition	26	Image
02/19/2021	The following form was generated: Notice to Appear in courtroom 8 at 9am on 3/2/2021 for Defendant's Second Motion for Relief of GPS Condition Sent On: 02/19/2021 12:40:09 Notice Sent To: Anthony R Mastromarino, Jr., Esq. Attorney and Counsellor at Law 1585 Somerset Ave, Taunton, MA 02780 Notice Sent To: Matthew H Friedel, Esq. Bristol County District Attorney's Office 218 S Main St, Fall River, MA 02721		
02/19/2021	The following form was generated: Notice to Appear in courtroom 8 at 9am on 3/2/2021 for Defendant's Second Motion for Relief of GPS Condition Sent On: 02/19/2021 12:41:03 Notice Sent To: Antonio B Nascimento-Depina 84 Cedar Street Apt. 1, Taunton, MA 02780		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/02/2021	Event Result:: Motion Hearing to Modify Probation Term/Conditions scheduled on: 03/02/2021 09:00 AM Has been: Held via Video/Teleconference Hon. Raffi N Yessayan, Presiding Appeared: Prosecutor Matthew H Friedel, Esq., Defendant Antonio B Nascimento-Depina Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Cape Verdean Interpreter Aldina Perreira Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
03/02/2021	Endorsement on Motion for Relief of GPS Condition, (#25.0): ALLOWED Defendant will reside at 541 Cohannet Street, Taunton, MA. All other conditions will remain in effect. Judge: Yessayan, Hon. Raffi N		Image
03/02/2021	ORDER: OF MODIFICATION OF CONDITIONS OF PRETRIAL RELEASE Judge: Yessayan, Hon. Raffi N	27	Image
03/14/2021	Event Result:: Jury Trial scheduled on: 05/10/2021 09:00 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. Raffi N Yessayan, Presiding Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
03/14/2021	Scheduled: Judge: Cosgrove, Hon. Robert C Event: Jury Trial Date: 05/10/2021 Time: 09:00 AM Result: Rescheduled		
03/14/2021	Event Result:: Final Pre-Trial Conference scheduled on: 04/23/2021 09:00 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. Raffi N Yessayan, Presiding Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
03/30/2021	Event Result:: Final Pre-Trial Conference scheduled on: 04/23/2021 09:00 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. Raffi N Yessayan, Presiding Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
04/15/2021	Event Result:: Final Pre-Trial Conference scheduled on: 04/15/2021 09:00 AM Has been: Held via Video/Teleconference Hon. Renee P Dupuis, Presiding Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter 04/15/2021 09:00 AM		
04/15/2021	Document: Notice to Appear for Final Pretrial on April 27, 2021 at 9:00 a.m. in CR6 Sent On: 04/15/2021 11:17:53 Notice Sent To: Anthony R Mastromarino, Jr., Esq. Attorney and Counsellor at Law 1585 Somerset Ave, Taunton, MA 02780 Notice Sent To: Matthew H Friedel, Esq. Bristol County District Attorney's Office 218 S Main St, Fall River, MA 02721		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/15/2021	The following form was generated: Notice to Appear for Trial on May 10, 2021 at 9:00 a.m. in CR9 Sent On: 04/15/2021 11:19:12 Notice Sent To: Anthony R Mastromarino, Jr., Esq. Attorney and Counsellor at Law 1585 Somerset Ave, Taunton, MA 02780 Notice Sent To: Matthew H Friedel, Esq. Bristol County District Attorney's Office 218 S Main St, Fall River, MA 02721		
04/22/2021	Commonwealth 's Motion to Permit Use of Photographs at Trial	28	Image
04/22/2021	Commonwealth 's Certificate of Compliance	29	Image
04/22/2021	Commonwealth 's Motion in Limine: First Complaint	30	Image
04/22/2021	Commonwealth 's Motion to Preclude the Use of Prior Inconsistent Statements as Substantive Evidence	31	Image
04/22/2021	Commonwealth Bristol County District Attorney's proposed juror Voir Dire questions filed. Applies To: Bristol County District Attorney (Prosecutor)	32	Image
04/22/2021	Commonwealth 's Motion in Limine to Preclude Reference to (1) Any Alleged "Bad Character" or "Bad Reputation" of I.D. and (2) Any Alleged "Prior Bad Acts" of I.D.	33	
04/22/2021	Commonwealth 's Motion in Limine to Preclude Reference to (1) Any Alleged "Bad Character" or "Bad Reputation" of the Victim and (2) Any Alleged "Prior Bad Acts" of the Victim	34	Image
04/22/2021	Commonwealth 's Request for a Cape Verdean Creole Interpreter	35	Image
04/27/2021	Event Result:: Final Pre-Trial Conference scheduled on: 04/27/2021 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Comments: Time ordered excluded for Rule 36 Hon. Renee P Dupuis, Presiding Staff: Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device Bris CR3, Court Reporter 04/27/2021 09:00 AM		
04/27/2021	Event Result:: Jury Trial scheduled on: 05/10/2021 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Comments: Time ordered excluded Rule 36 Anthony J Manieri, Presiding Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter		
04/27/2021	Scheduled: Judge: Cosgrove, Hon. Robert C Event: Jury Trial Date: 08/16/2021 Time: 09:00 AM Result: Rescheduled		
04/27/2021	Defendant 's Motion for Individual Voir Dire	36	
04/27/2021	Defendant 's Notice of Business Records	37	Image
04/27/2021	Defendant 's Objection to Fresh Complaint Witness	38	
04/27/2021	Defendant 's Objection to Photograph	39	Image
04/27/2021	Defendant 's Objection to Preclusion of Prior Bad Acts	40	Image
04/27/2021	Defendant 's Objection to Procedural Changes	41	Image
04/27/2021	Defendant 's Request for Instruction	42	Image
04/27/2021	Pre-trial conference report filed (Joint Pretrial Memorandum)	43	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/28/2021	<p>The following form was generated:</p> <p>Notice to Appear in Courtroom 6 at 9:00 am on July 30, 2021 for a Motion in Limine and also for Further PTC date. **Defendant to be present in person.** Sent On: 04/28/2021 10:38:46 Notice Sent To: Defendant, Antonio B Nascimento-Depina 84 Cedar St, Taunton, MA 02780 Notice Sent To: Anthony R Mastromarino, Jr., Esq. Attorney and Counsellor at Law 1585 Somerset Ave, Taunton, MA 02780 Notice Sent To: Matthew H Friedel, Esq. Bristol County District Attorney's Office 218 S Main St, Fall River, MA 02721</p>		
04/28/2021	<p>The following form was generated:</p> <p>Notice to Appear in Courtroom 6 at 9:00 am on August 16, 2021 for Jury Trial Sent On: 04/28/2021 10:45:34 Notice Sent To: Anthony R Mastromarino, Jr., Esq. Attorney and Counsellor at Law 1585 Somerset Ave, Taunton, MA 02780 Notice Sent To: Matthew H Friedel, Esq. Bristol County District Attorney's Office 218 S Main St, Fall River, MA 02721</p>		
04/29/2021	Defendant 's Objection to Testimony Not Charged	44	Image
06/22/2021	Defendant 's Motion for Permission to Change Address	45	Image
06/24/2021	Endorsement on Motion for Permission to Change Address, (#45.0): ALLOWED Judge: Yessayan, Hon. Raffi N		Image
06/24/2021	<p>The following form was generated: A Clerk's Notice regarding Paper #45 was generated and sent to: Defendant, Attorney: Anthony R Mastromarino, Jr., Esq. Attorney and Counsellor at Law 1585 Somerset Ave, Taunton, MA 02780 Prosecutor, Attorney: Matthew H Friedel, Esq. Bristol County District Attorney's Office 218 S Main St, Fall River, MA 02721</p>		
07/30/2021	<p>Event Result:: Hearing on Motion(s) in Limine scheduled on: 07/30/2021 09:00 AM Has been: Not Held For the following reason: Other event activity needed Comments: Motions in limine put over to trial date for hearing Hon. Renee P Dupuis, Presiding Appeared: Prosecutor Matthew H Friedel, Esq., Defendant Antonio B Nascimento-Depina Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Anthony J Manieri, Assistant Clerk Magistrate 07/30/2021 09:00 AM Digital Recording Device Bris CR3, Court Reporter 07/30/2021 09:00 AM</p>		
08/09/2021	Defendant 's Motion to Continue	46	Image
08/13/2021	<p>Event Result:: Hearing on Motion to Continue scheduled on: 08/13/2021 09:00 AM Has been: Held as Scheduled Hon. Renee P Dupuis, Presiding Appeared: Prosecutor Matthew H Friedel, Esq., Defendant Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device Bris CR3, Court Reporter 08/13/2021 09:00 AM</p>		
08/13/2021	<p>Event Result:: Jury Trial scheduled on: 08/16/2021 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Hon. Renee P Dupuis, Presiding Staff: Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device Bris CR3, Court Reporter</p>		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/13/2021	Scheduled: Judge: Cosgrove, Hon. Robert C Event: Jury Trial Date: 09/13/2021 Time: 09:00 AM Result: Rescheduled		
08/13/2021	Endorsement on Motion to Continue, (#46.0): ALLOWED Judge: Dupuis, Hon. Renee P		Image
08/13/2021	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Anthony R Mastromarino, Jr., Esq. Attorney and Counsellor at Law 1585 Somerset Ave, Taunton, MA 02780 Prosecutor, Attorney: Matthew H Friedel, Esq. Bristol County District Attorney's Office 218 S Main St, Fall River, MA 02721		
09/10/2021	Commonwealth 's Motion to Exclude DNA Evidence	47	Image
09/10/2021	Event Result:: Final Pre-Trial Conference scheduled on: 09/10/2021 02:00 PM Has been: Held as Scheduled Hon. Renee P Dupuis, Presiding Staff: Mark Ferriera, Assistant Clerk Magistrate Digital Recording Device Bris CR3, Court Reporter		
09/13/2021	Event Result:: Jury Trial scheduled on: 09/13/2021 09:00 AM Has been: Rescheduled For the following reason: Not reached by Court Comments: Due to Matthew Lander murder trial. Hon. Renee P Dupuis, Presiding Staff: Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device Bris CR3, Court Reporter		
12/07/2021	Witness list Applies To: Mastromarino, Jr., Esq., Anthony R (Attorney) on behalf of Nascimento-Depina, Antonio B (Defendant)	48	Image
12/13/2021	Defendant 's Motion for Funds to Hire an Expert	49	Image
12/13/2021	Event Result:: Jury Trial scheduled on: 12/13/2021 09:00 AM Has been: Rescheduled For the following reason: Not reached by Court Hon. Raffi N Yessayan, Presiding Staff: Mark A Ferriera, Assistant Clerk Magistrate Digital Recording Device Bris CR3, Court Reporter		
12/20/2021	Scheduled: Judge: McGuire, Jr., Hon. Thomas F Event: Jury Trial Date: 02/28/2022 Time: 09:00 AM Result: Rescheduled		
12/20/2021	Event Result:: Trial Assignment Conference scheduled on: 12/20/2021 09:00 AM Has been: Held as Scheduled Hon. Raffi N Yessayan, Presiding Appeared: Prosecutor Matthew H Friedel, Esq., Defendant Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Mark A Ferriera, Assistant Clerk Magistrate Digital Recording Device Bris CR3, Court Reporter 12/20/2021 09:00 AM		
12/20/2021	Endorsement on Motion for Funds to Hire an Expert, (#49.0): ALLOWED Judge: Yessayan, Hon. Raffi N		Image
12/20/2021	Commonwealth 's Motion to Prioritize Trial	50	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
12/20/2021	Endorsement on Motion to Prioritize Trial, (#50.0): ALLOWED 2/28/22 trial. Judge: Yessayan, Hon. Raffi N		Image
02/11/2022	Event Result:: Status Review scheduled on: 02/11/2022 02:00 PM Has been: Held as Scheduled Hon. Gregg J Pasquale, Presiding Appeared: Prosecutor Matthew H Friedel, Esq., Defendant Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter 02/11/2022 02:00 PM		
02/11/2022	Event Result:: Jury Trial scheduled on: 02/28/2022 09:00 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Gregg J Pasquale, Presiding Staff: Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter		
03/02/2022	Event Result:: Trial Assignment Conference scheduled on: 03/03/2022 09:00 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Gregg J Pasquale, Presiding Staff: Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter		
03/16/2022	Scheduled: Judge: Leighton, Hon. Joseph Event: Jury Trial Date: 07/11/2022 Time: 09:00 AM Result: Rescheduled		
03/16/2022	Event Result:: Trial Assignment Conference scheduled on: 03/16/2022 02:00 PM Has been: Held as Scheduled Hon. Gregg J Pasquale, Presiding Appeared: Prosecutor Matthew H Friedel, Esq., Defendant Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter 03/16/2022 02:00 PM		
03/16/2022	Document: Notice to Appear for Final Pretrial on June 24, 2022 at 2:00 p.m. in CR7 Sent On: 03/16/2022 15:59:20 to ADA Friedel, Att. Mastromarino		
03/16/2022	The following form was generated: Notice to Appear for Trial on July 11, 2022 at 9:00 a.m. in CR7 Sent On: 03/16/2022 15:59:58 to ADA Friedel, Att. Mastromarino		
03/18/2022	Event Result:: Jury Trial scheduled on: 07/11/2022 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Mark A Ferriera, Presiding Staff: Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter		
03/18/2022	Scheduled: Judge: Leighton, Hon. Joseph Event: Jury Trial Date: 08/01/2022 Time: 09:00 AM Result: Held as Scheduled		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/18/2022	Commonwealth 's Motion to Continue	51	
03/18/2022	Endorsement on Motion to Continue, (#51.0): ALLOWED Mark A. Ferriera, Asst. Clerk/Magistrate Judge: Pasquale, Hon. Gregg J		Image
03/18/2022	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Anthony R Mastromarino, Jr., Esq. Attorney and Counsellor at Law 1585 Somerset Ave, Taunton, MA 02780 Prosecutor, Attorney: Matthew H Friedel, Esq. Bristol County District Attorney's Office 218 S Main St, Fall River, MA 02721		
04/06/2022	Notice of Violation of Pre-Trial Release	52	Image
04/06/2022	Endorsement on Notice of Violation of Pretrial Conditions of Release, (#52.0): This summons shall be sent for the defendant to appear. Judge: White, Jr., Hon. William M		Image
04/07/2022	The following form was generated: Notice to Appear on June 24, 2022 at 9:00 a.m. in CR7 for Violation of Probation Hearing Sent On: 04/07/2022 08:06:05 to defendant, Att. Friedel, Att. Mastromarino, probation department		
06/13/2022	Defendant 's Motion for Permission to Travel to Rhode Island	53	Image
06/13/2022	Endorsement on Motion for Permission to Travel to Rhode Island, (#53.0): ALLOWED Judge: White, Jr., Hon. William M		Image
06/13/2022	ORDER: for Modification of Conditions of Pretrial Release Judge: White, Jr., Hon. William M	54	Image
06/14/2022	The following form was generated: A Clerk's Notice regarding Paper #53 was generated and sent to: Defendant, Attorney: Anthony R Mastromarino, Jr., Esq. Attorney and Counsellor at Law 1585 Somerset Ave, Taunton, MA 02780 Prosecutor, Attorney: Matthew H Friedel, Esq. Department of Children and Families 110 Mulberry St, Brockton, MA 02302 Probation Department		
06/22/2022	Attorney appearance On this date Matthew H Friedel, Esq. dismissed/withdrawn for Prosecutor Bristol County District Attorney		
06/22/2022	Attorney appearance On this date Caleb Weiner, Esq. added as Attorney for the Commonwealth for Prosecutor Bristol County District Attorney		
06/24/2022	Event Result:: Violation of Probation Hearing scheduled on: 06/24/2022 09:00 AM Has been: Not Held For the following reason: Joint request of parties Comments: Parties report issue resolved. Hon. Renee P Dupuis, Presiding Staff: Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter		
06/24/2022	Event Result:: Final Pre-Trial Conference scheduled on: 06/24/2022 09:00 AM Has been: Rescheduled For the following reason: Court Order Comments: Referred to the trial judge. Hon. Renee P Dupuis, Presiding Appeared: Prosecutor Caleb Weiner, Esq., Attorney for the Commonwealth Defendant Antonio B Nascimento-Depina Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter 06/24/2022 09:00 AM		
07/01/2022	Defendant 's Motion for Permission to Attend Wake and Funeral	55	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/01/2022	Endorsement on Motion for Permission to Attend Wake and Funeral, (#55.0): ALLOWED without objection. Judge: McGuire, Jr., Hon. Thomas F		Image
07/01/2022	The following form was generated: A Clerk's Notice regarding Paper #55 was generated and sent to: Defendant, Attorney: Anthony R Mastromarino, Jr., Esq. Attorney and Counsellor at Law 1585 Somerset Ave, Taunton, MA 02780 Prosecutor, Attorney: Caleb Weiner, Esq. Bristol District Attorney 888 Purchase St, New Bedford, MA 02740 Probation Department		
07/15/2022	Event Result:: Final Pre-Trial Conference scheduled on: 07/15/2022 02:00 PM Has been: Held as Scheduled Hon. Daniel J. O'Shea, Presiding Appeared: Prosecutor Caleb Weiner, Esq., Attorney for the Commonwealth Defendant Antonio B Nascimento-Depina Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter 07/15/2022 02:00 PM		
07/21/2022	Event Result:: Hearing on Motion(s) in Limine scheduled on: 07/21/2022 09:00 AM Has been: Held as Scheduled Hon. Daniel J. O'Shea, Presiding Appeared: Prosecutor Caleb Weiner, Esq., Attorney for the Commonwealth Defendant Antonio B Nascimento-Depina Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter 07/21/2022 09:00 AM		
08/01/2022	Scheduled: Judge: O'Shea, Hon. Daniel J. Event: Jury Trial Date: 08/03/2022 Time: 09:00 AM Result: Held as Scheduled		
08/01/2022	Scheduled: Judge: O'Shea, Hon. Daniel J. Event: Jury Trial Date: 08/04/2022 Time: 09:00 AM Result: Held as Scheduled		
08/01/2022	Scheduled: Judge: O'Shea, Hon. Daniel J. Event: Jury Trial Date: 08/05/2022 Time: 09:00 AM Result: Held as Scheduled		
08/01/2022	Scheduled: Judge: O'Shea, Hon. Daniel J. Event: Jury Trial Date: 08/08/2022 Time: 09:00 AM Result: Held as Scheduled		
08/01/2022	Scheduled: Judge: O'Shea, Hon. Daniel J. Event: Jury Trial Date: 08/09/2022 Time: 09:00 AM Result: Held as Scheduled		
08/01/2022	Scheduled: Judge: O'Shea, Hon. Daniel J. Event: Jury Trial Date: 08/10/2022 Time: 09:00 AM		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/01/2022	Scheduled: Judge: O'Shea, Hon. Daniel J. Event: Jury Trial Date: 08/11/2022 Time: 09:00 AM		
08/01/2022	Scheduled: Judge: O'Shea, Hon. Daniel J. Event: Jury Trial Date: 08/12/2022 Time: 09:00 AM		
08/01/2022	Event Result:: Jury Trial scheduled on: 08/01/2022 09:00 AM Has been: Held as Scheduled Comments: Preliminary issues addressed. Empanelment to begin 8/3. Hon. Daniel J. O'Shea, Presiding Appeared: Prosecutor Caleb Weiner, Esq., Attorney for the Commonwealth Defendant Antonio B Nascimento-Depina Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter 08/01/2022 09:00 AM		
08/02/2022	Commonwealth 's Supplement to Previously Filed Motion in Limine to Introduce First Complaint Testimony	56	Image
08/03/2022	Event Result:: Jury Trial scheduled on: 08/03/2022 09:00 AM Has been: Held as Scheduled Comments: Empanelment day 1 Hon. Daniel J. O'Shea, Presiding Appeared: Prosecutor Caleb Weiner, Esq., Attorney for the Commonwealth Defendant Antonio B Nascimento-Depina Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter 08/03/2022 09:00 AM		
08/04/2022	Interpreter present Aldina Pereira, Cape Verdean		
08/04/2022	Event Result:: Jury Trial scheduled on: 08/04/2022 09:00 AM Has been: Held as Scheduled Hon. Daniel J. O'Shea, Presiding Appeared: Prosecutor Caleb Weiner, Esq., Attorney for the Commonwealth Defendant Antonio B Nascimento-Depina Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: G.R. Fregault, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter 08/04/2022 09:00 AM		
08/04/2022	Jury Trial Jury Impaneled. 14 jurors in the box		
08/05/2022	Commonwealth 's Motion in limine Identification Witness	57	
08/05/2022	Commonwealth 's Motion in limine Identification Witness	58	
08/05/2022	Commonwealth 's Motion to Exclude any Evidence or Claim by Defendant of an Alibi	59	
08/05/2022	Commonwealth 's Motion to Preclude Reference and Questioning Regarding Scientific/Forensic Evidence	60	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/05/2022	Event Result:: Jury Trial scheduled on: 08/05/2022 09:00 AM Has been: Held as Scheduled Hon. Daniel J. O'Shea, Presiding Appeared: Prosecutor Caleb Weiner, Esq., Attorney for the Commonwealth Defendant Antonio B Nascimento-Depina Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter 08/05/2022 09:00 AM		
08/05/2022	Interpreter present Aldina Pereira, Cape Verdean		
08/05/2022	Defendant 's Motion to Sequester Witnesses	61	
08/05/2022	Endorsement on Motion to Sequester Witnesses, (#61.0): ALLOWED Judge: O'Shea, Hon. Daniel J.		
08/05/2022	Endorsement on Motion to Exclude DNA Evidence, (#47.0): DENIED Judge: O'Shea, Hon. Daniel J.		
08/08/2022	Event Result:: Jury Trial scheduled on: 08/08/2022 09:00 AM Has been: Held as Scheduled Hon. Daniel J. O'Shea, Presiding Appeared: Prosecutor Caleb Weiner, Esq., Attorney for the Commonwealth Defendant Antonio B Nascimento-Depina Anthony R Mastromarino, Jr., Esq., Appointed - Indigent Defendant Staff: Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter 08/08/2022 09:00 AM		
08/08/2022	Defendant 's Motion for Directed Verdict Judge: O'Shea, Hon. Daniel J.	62	Image
08/08/2022	Pro Se Defendant 's Motion for Renewed Directed Verdict Judge: O'Shea, Hon. Daniel J.	63	Image
08/08/2022	Pro Se Defendant 's Motion for Defendant's request for Separate and Distinct Instruction / First Complaint Witness Instruction Judge: O'Shea, Hon. Daniel J.	64	Image
08/08/2022	Endorsement on Motion for Directed Verdict, (#62.0): DENIED Judge: O'Shea, Hon. Daniel J.		
08/08/2022	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Anthony R Mastromarino, Jr., Esq. Attorney and Counsellor at Law 1585 Somerset Ave, Taunton, MA 02780 Prosecutor, Attorney: Caleb Weiner, Esq. Bristol District Attorney 888 Purchase St, New Bedford, MA 02740		
08/08/2022	Endorsement on Motion for Renewed Directed Verdict, (#63.0): DENIED Judge: O'Shea, Hon. Daniel J.		
08/08/2022	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Anthony R Mastromarino, Jr., Esq. Attorney and Counsellor at Law 1585 Somerset Ave, Taunton, MA 02780 Prosecutor, Attorney: Caleb Weiner, Esq. Bristol District Attorney 888 Purchase St, New Bedford, MA 02740		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/09/2022	Event Result:: Jury Trial scheduled on: 08/09/2022 09:00 AM Has been: Held as Scheduled Hon. Daniel J. O'Shea, Presiding Staff: Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter		
08/09/2022	Bail set on 08/09/2022 revoked. Judge: O'Shea, Hon. Daniel J.		
08/09/2022	List of exhibits Jury Trial	65	Image
08/09/2022	Verdict affirmed, verdict slip filed Guilty as to offense 1	66	Image
08/09/2022	Verdict affirmed, verdict slip filed Guilty as to offense 2	67	Image
08/09/2022	Verdict affirmed, verdict slip filed Guilty as to offense 3	68	Image
08/09/2022	Verdict affirmed, verdict slip filed Guilty as to offense 4	69	Image
08/09/2022	Verdict affirmed, verdict slip filed Guilty as to offense 5	70	Image
08/09/2022	Offense Disposition:: Charge #1 RAPE OF CHILD, AGGRAVATED, TEN YEAR AGE DIFFERENCE c265 §23A On: 08/09/2022 Judge: Hon. Daniel J. O'Shea By: Jury Trial Guilty Verdict Charge #2 RAPE OF CHILD, AGGRAVATED, TEN YEAR AGE DIFFERENCE c265 §23A On: 08/09/2022 Judge: Hon. Daniel J. O'Shea By: Jury Trial Guilty Verdict Charge #3 INDECENT A&B ON CHILD UNDER 14 c265 §13B On: 08/09/2022 Judge: Hon. Daniel J. O'Shea By: Jury Trial Guilty Verdict Charge #4 INDECENT A&B ON CHILD UNDER 14 c265 §13B On: 08/09/2022 Judge: Hon. Daniel J. O'Shea By: Jury Trial Guilty Verdict Charge #5 INDECENT A&B ON CHILD UNDER 14 c265 §13B On: 08/09/2022 Judge: Hon. Daniel J. O'Shea By: Jury Trial Guilty Verdict		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/09/2022	<p>Defendant sentenced:: Sentence Date: 08/09/2022 Judge: Hon. Daniel J. O'Shea</p> <p>Charge #: 1 RAPE OF CHILD, AGGRAVATED, TEN YEAR AGE DIFFERENCE c265 §23A State Prison Sentence Not Less Than: 10 Years, 0 Months, 0 Days Not More Than: 12 Years, 0 Months, 0 Days</p> <p>Charge #: 2 RAPE OF CHILD, AGGRAVATED, TEN YEAR AGE DIFFERENCE c265 §23A State Prison Sentence Not Less Than: 10 Years, 0 Months, 0 Days Not More Than: 12 Years, 0 Months, 0 Days Served Concurrently Charge # 1</p> <p>Charge #: 3 INDECENT A&B ON CHILD UNDER 14 c265 §13B State Prison Sentence Not Less Than: 9 Years, 6 Months, 0 Days Not More Than: 10 Years, 0 Months, 0 Days Served Concurrently Charge # 1</p> <p>Charge #: 4 INDECENT A&B ON CHILD UNDER 14 c265 §13B State Prison Sentence Not Less Than: 9 Years, 6 Months, 0 Days Not More Than: 10 Years, 0 Months, 0 Days Served Concurrently Charge # 1</p> <p>Charge #: 5 INDECENT A&B ON CHILD UNDER 14 c265 §13B State Prison Sentence Not Less Than: 9 Years, 6 Months, 0 Days Not More Than: 10 Years, 0 Months, 0 Days Served Concurrently Charge # 1</p> <p>Committed to Souza Baranowski Correctional Center Credits 391 Days</p>		
08/09/2022	<p>Issued on this date:</p> <p>Mittimus for Sentence (All Charges) Sent On: 08/09/2022 16:02:02</p>	71	Image
08/09/2022	Defendant warned as to submission of DNA G.L. c. 22E, § 3		
08/09/2022	Defendant notified of right of appeal to the Appellate Division of the Superior Court within ten (10) days.		
08/09/2022	Defendant notified of right of appeal to the Appeals Court within thirty (30) days.		
08/09/2022	Findings and Order of Statutory Fees	72	Image
08/09/2022	<p>DNA fee WAIVED</p> <p>Judge: O'Shea, Hon. Daniel J.</p>		
08/09/2022	<p>Notice of appeal filed from conviction dated 8/9/22; form sent to counsel.</p> <p>Applies To: Nascimento-Depina, Antonio B (Defendant)</p>	73	Image
08/11/2022	<p>Attorney appearance</p> <p>On this date David B Mark, Esq. added as Attorney for the Commonwealth for Prosecutor Bristol County District Attorney</p>		
08/18/2022	Notice of appeal from sentence to Souza Baranowski Correctional Center filed by defendant	74	Image
08/18/2022	Notification to the Appellate Division sent.	75	
08/18/2022	<p>Document:</p> <p>Letter to the Appellate Division Sent On: 08/18/2022 14:38:56</p>		
09/07/2022	Defendant 's Notice of withdrawal	76	Image
09/09/2022	General correspondence regarding request for certified complaints mailed to U.S. Immigration and Customs Enforcement, Dept of Homeland Security, 1000 District Avenue, Burlington, MA 01803 Attn: DIO Pamela M. Loughran, 287 g.	77	Image

Case Disposition

Disposition	Date	Case Judge
Disposed by Jury Verdict	08/09/2022	

BRISTOL, SS. On this twenty-ninth day of November this indictment was returned and presented to said Superior Court by the Grand Jury and ordered to be filed and filed.

Attest:

Clerk/Magistrate



TA-DI

No. 1873CR00436-1

INDICTMENT

Commonwealth

VS.

Antonio Nascimento-Depina

Rape of Child Aggravated by Age
265/23A(b)

Sup. C. October Sitting 2018

Commonwealth of Massachusetts

BRISTOL, SS.

At the SUPERIOR COURT holden at Fall River within and for the County of Bristol, for the transaction of criminal business on the First Monday of October, 2018,

THE JURORS for the said Commonwealth on their oath present, That

Antonio Nascimento-Depina,

on or between July 28, 2018, and July 29, 2018, at Taunton, in the County of Bristol
aforesaid,

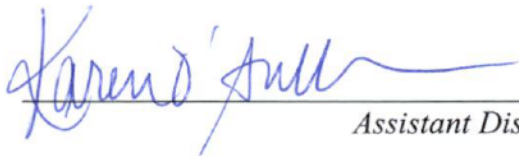
did have natural and/or unnatural sexual intercourse with a child under the age of sixteen
years old and at least twelve years of age, where there existed more than a ten-year age
difference between him and said child, to wit: penis in vagina.

(G.L. Chap. 265, Sec. 23A(b))

A true bill.



Foreperson of the Grand Jury.



Assistant District Attorney.

Commonwealth of Massachusetts

BRISTOL, SS.

At the SUPERIOR COURT holden at Fall River within and for the County of Bristol, for the transaction of criminal business on the First Monday of October, 2018,

THE JURORS for the said Commonwealth on their oath present, That

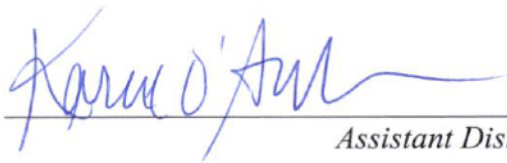
Antonio Nascimento-Depina,

on or between July 28, 2018, and July 29, 2018, at Taunton, in the County of Bristol
aforesaid,

did have natural and/or unnatural sexual intercourse with a child under the age of sixteen
years old and at least twelve years of age, where there existed more than a ten-year age
difference between him and said child, to wit: finger in vagina.

(G.L. Chap. 265, Sec. 23A(b))

A true bill.



Assistant District Attorney.



Foreperson of the Grand Jury.

BRISTOL, SS. On this twenty-ninth day of November
in the year Two Thousand and Eighteen this indictment was returned and
presented to said Superior Court by the Grand Jury and ordered to be filed and filed.

Attest:


ASST

Clerk/Magistrate

TA-DI

No. 1873CR00436-3

INDICTMENT

Commonwealth

vs.

Antonio Nascimento-Depina

Ind A&B on Child w/14 265/13B

Sup.C. October Sitting 2018

Commonwealth of Massachusetts

BRISTOL, SS.

At the SUPERIOR COURT holden at Fall River within and for the County of Bristol, for the transaction of criminal business on the First Monday of October, 2018,

THE JURORS for the said Commonwealth on their oath present, That

Antonio Nascimento-Depina,

on or between July 28, 2018, and July 29, 2018, at Taunton, in the County of Bristol

aforesaid,

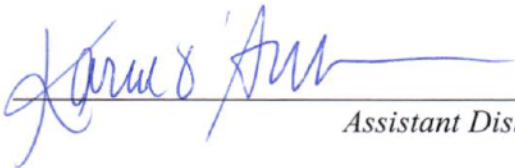
did indecently assault and beat a child under the age of fourteen years, to wit: penis touch
vagina.

(G.L. Chap. 265, Sec. 13B)

A true bill.



Foreperson of the Grand Jury.



Assistant District Attorney.

BRISTOL, SS. On this twenty-ninth day of November
in the year Two Thousand and Eighteen this indictment was returned and
presented to said Superior Court by the Grand Jury and ordered to be filed and filed.

Attest:


ASB

Clerk/Magistrate

TA-DI

No. 1873CR00436-4

INDICTMENT

Commonwealth

vs.

Antonio Nascimento-Depina

Ind A&B on Child u/14 265/13B

Sup. C. October Sitting 2018

Commonwealth of Massachusetts

BRISTOL, SS.

At the SUPERIOR COURT holden at Fall River within and for the County of Bristol, for the transaction of criminal business on the First Monday of October, 2018,

THE JURORS for the said Commonwealth on their oath present, That

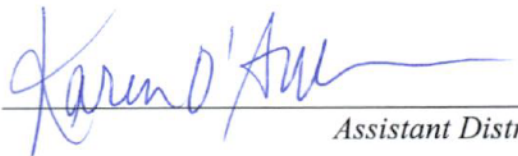
Antonio Nascimento-Depina,

on or between July 28, 2018, and July 29, 2018, at Taunton, in the County of Bristol
aforesaid,

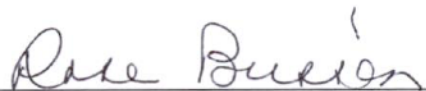
did indecently assault and beat a child under the age of fourteen years, to wit: finger touch
vagina.

(G.L. Chap. 265, Sec. 13B)

A true bill.



Assistant District Attorney.



Foreperson of the Grand Jury.

BRISTOL, SS. On this twenty-ninth day of November
in the year Two Thousand and Eighteen this indictment was returned and
presented to said Superior Court by the Grand Jury and ordered to be filed and filed.

Attest:



Clerk/Magistrate

TA-DI

No. 1873CR00436-5

INDICTMENT

Commonwealth

vs.

Antonio Nascimento-Depina

Ind A&B on Child u/14 265/13B

Sup. C. October Sitting 2018

Commonwealth of Massachusetts

BRISTOL, SS.

At the SUPERIOR COURT holden at Fall River within and for the County of Bristol, for the transaction of criminal business on the First Monday of October, 2018,

THE JURORS for the said Commonwealth on their oath present, That

Antonio Nascimento-Depina,

on or between July 28, 2018, and July 29, 2018, at Taunton, in the County of Bristol
aforesaid,

did indecently assault and beat a child under the age of fourteen years, to wit: hand on
breast.

(G.L. Chap. 265, Sec. 13B)

A true bill.



Assistant District Attorney.



Foreperson of the Grand Jury.

16.
COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

BRISTOL, SS SUPERIOR COURT
FILED

SUPERIOR COURT DEPT.
NO: 1873CR0436

JUL 22 2019

MARC J SANTOS, ESQ.
CLERK/MAGISTRATE

COMMONWEALTH

v.

ANTONIO NASCIMENTO-DEPINA

**COMMONWEALTH'S MOTION FOR ORDER
COMPELLING DEFENDANT TO PROVIDE D.N.A. SAMPLE**

Now comes the Commonwealth in the above-captioned matter and respectfully moves this Honorable Court for an order compelling the defendant, Antonio Nascimento-Depina (DOB: 9/2/60) to provide the Commonwealth with a sample of his deoxyribonucleic acid (DNA) via a buccal swab,¹ to be taken by qualified law enforcement personnel, for the purpose of DNA analysis and comparison.

Factual Basis

In the instant case, the defendant is charged with w counts of Rape of Child Aggravated by Age and three counts of indecent assault and Battery under 14. It is alleged that the defendant raped his granddaughter on numerous occasions. The most recent rape took place on the Saturday prior to her disclosure. She indicated white stuff came out of his penis and on to his bed. Blankets from the defendant's bed were seized as evidence. Swabs and scrapings of light brown stain on a blue blanket seized from the defendant's bedroom on 84 Cedar Street in

¹ A buccal swab "involves the rubbing of a swab on the interior surface of the cheek." Doe v. Senechal, 431 Mass. 78, 79 n.4, cert. denied, 531 U.S. 825 (2000).

Taunton were found to contain sperm fractions. The lab has indicated that the samples are sufficient for comparison to a standard from the suspect.

Legal Standard

Similar to a post-indictment request for a blood sample, the Commonwealth may obtain a buccal swab from a defendant by demonstrating at an adversarial (but not necessarily evidentiary) hearing, that the buccal swab "will probably provide evidence relevant to the question of the defendant's guilt." Commonwealth v. Maxwell, 441 Mass. 773, 774 (2004), citing Commonwealth v. Trigones, 397 Mass. 633, 640 (1986). Although the buccal swab implicates the protections afforded by the Fourth Amendment to the United States Constitution against unreasonable searches and seizures, it is no more intrusive than the taking of a blood sample. Id. at 777. In fact, "[u]nlike a blood sample extracted by needle, a buccal swab does not involve an 'intrusion below the skin,' and is arguably more akin to a saliva sample, as it involves obtaining bodily material from inside the mouth." Id. at 778, citing Schmerber v. California, 384 U.S. 757, 769-770 (1966).

Argument

A buccal swab of the interior of the defendant's cheek is likely to produce evidence relevant to the question of the defendant's guilt. The buccal swab will collect a sample of the defendant's DNA which will in turn enable the Commonwealth to determine whether the defendant's DNA in fact matches stains on blankets where the victim stated the defendant ejaculated.

Furthermore, the taking of a buccal swab by qualified law enforcement personnel pursuant to established procedures is a "relatively minor intrusion" so as to render such an order reasonable. Commonwealth v. Trigones, 397 Mass. at 640-641. Additionally, as this motion

requests physical evidence from the defendant, his Fifth Amendment privilege against self-incrimination is not implicated. See Commonwealth v. McGrail, 419 Mass. 774, 777 (1995) ("the privilege against self-incrimination under art. 12... protects only against the compulsion of communications or testimony and not against the production of real or physical evidence such as fingerprints, photographs, lineups, blood samples, handwriting, and voice exemplars").

Lastly, the sooner the defendant's DNA sample is collected; the sooner the DNA testing will be completed, thus preventing any unnecessary delay in the defendant's case being ready for trial.

Conclusion

For the foregoing reasons, the Commonwealth requests that this Honorable Court allow this motion and order the defendant to provide a sample of his DNA by submitting to a buccal swab by qualified law enforcement personnel. A proposed order is attached hereto.

Respectfully submitted
For the Commonwealth,
THOMAS M. QUINN, III.
BRISTOL DISTRICT ATTORNEY
By His Assistant:



Matt Friedel
Assistant District Attorney
Bristol District

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPT.
NO: 1873CR0436

COMMONWEALTH

v.


ANTONIO NASCIMENTO-DEPINA

**AFFIDAVIT IN SUPPORT OF COMMONWEALTH'S MOTION FOR ORDER
COMPELLING DEFENDANT TO PROVIDE D.N.A. SAMPLE**

I, Matt Friedel, do hereby make this my affidavit and state as follows:

1. I am an Assistant District Attorney in Bristol County and represent the Commonwealth in the above-captioned matter.
2. The defendant has been charged with Rape and Indecent Assault and Battery it is alleged he raped his granddaughter.
3. A copy of the State Police Crime Lab Criminalistics Report (lab #17-12587) is provided and incorporated herewith.
4. The defendant is alleged to ejaculated on a blanket after he raped his granddaughter.
5. The Police collected samples from the crime scene.
6. Criminalistics Report (lab 18-20389) indicates sperm fractions were located on bedding at the scene of the rape.
7. DNA testing will likely produce evidence relevant to the defendant's guilt.
8. Wherefore, the Commonwealth requests this court to order the defendant to submit a saliva sample for DNA comparison.

The above information is true, accurate and complete to the best of my knowledge and belief. Signed under the pains and penalties of perjury this 15th day of December, 2017.



Matt Friedel
Assistant District Attorney

Commonwealth Of Massachusetts
Trial Court Department

Bristol, s.s.

BRISTOL, SS SUPERIOR COURT
FILED

Superior Court

Indictment No. 1873 CR 0436

AUG 07 2019

Commonwealth

*
MARC J SANTOS, ESQ.
CLERK/MAGISTRATE
*

v.

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*

Antonio Nascimento-Depina

*

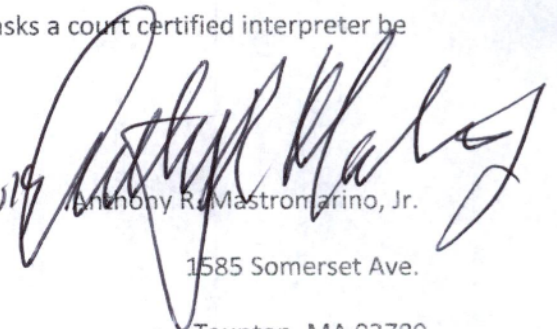
Defendant's Objection To Commonwealth's Motion For Order

Compelling Defendant To Provide DNA Sample

Now comes the Defendant through his attorney , Anthony R, Mastromarino, Jr. And moves that this Honorable Court deny Commonwealth's request for an order that the Defendant provide DNA SAMPLE.

The Defendant has concerns about the dissemination of his DNA and asks: IF an order enters that any use of said "evidence" or DNA test samples and results be limited to this indictment and not used for any other purpose including but not limited to investigative purposes.

Second should the Court order such sample be taken the Defendant asks a court certified interpreter be present so the Defendant's questions may be answered.

08/07/2019 
Anthony R. Mastromarino, Jr.
1585 Somerset Ave.
Taunton, MA 02780

508 828 4245

B.B.O. 558198 MA; 5317 ME

#44

Commonwealth Of Massachusetts
Trial Court Department

Bristol, s.s.

Superior Court

Indictment No. 1873 CR 0436

Commonwealth

*

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v.

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Antonio Nascimento-Depina

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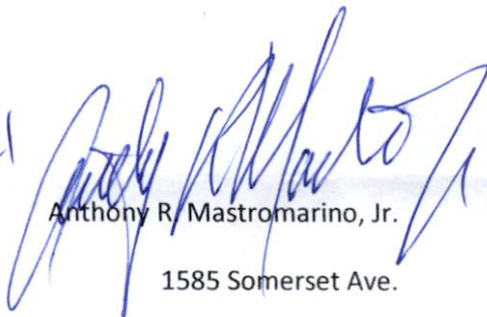
BRISTOL, SS SUPERIOR COURT
FILED

APR 29, 2021

MARC J SANTOS, ESQ.
CLERK/MAGISTRATE

Objection to Testimony Not Charged

Now comes Anthony R. Mastromarino, Jr. trial counsel for the Defendant and objects to the alleged victim testifying about uncharged conduct, which allegedly happened outside this county with another alleged victim.

04/27/2021 

Anthony R. Mastromarino, Jr.

1585 Somerset Ave.

Taunton, MA 02780

(508) 828-4245

B.B.O.# 558198

#43

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT DEPARTMENT
INDICTMENT NO.: 1873CR436

BRISTOL, SS SUPERIOR COURT
FILED

APR 27 2021

MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE

COMMONWEALTH

V.

ANTONIO NASCIMENTO-DEPINA

JOINT PRETRIAL MEMORANDUM

Now come the parties in the above-entitled matter and file the following Joint Pretrial Memorandum pursuant to Superior Court Standing Order 2-86 (as amended):

(1) Agreed statement of facts to be read to the jury during empanelment:

The defendant on or between 7/28/18 and 7/29/18 is alleged to have committed the 2 counts of Rape of Child Aggravated by age and three counts of Indecent Assault and Battery on a Child under 14.

The Defendant denies the allegation that forms the basis of this indictment.

(2) There are no stipulations presently proposed by any of the parties;

(3) List of names of prospective witnesses;

a. For the Commonwealth:

- i. Mira Depina-Alves of Chelsea
- ii. Illiana Depina of Chelsea
- iii. Detective Lynn Pina of Taunton Police
- iv. Detective Mark Brady of Taunton Police
- v. Patricia Borja of DCF
- vi. Jao Batista of Chelsea
- vii. Kira Snider of MSP Crime Lab
- viii.

The Commonwealth reserves the right to supplement this list seasonably before trial.

- b. For the Defendant:
 - Canaida Landim d.o.b. 11/12/1964
 - George Freitas d.o.b. 07/20/1947
 - Business Records Santander Bank

(4) The proposed exhibits include but are not limited to:

By the Commonwealth:

- Photographs of Victim
- Birth Certificates

By the Defendant:

Business Records of Santander Bank in clerks office

(5) The following are anticipated pretrial or trial motions to be heard by the trial judge. Commonwealth's Motions in Limine as allowed by law and procedure and may include:

- Motion in Limine to Admit First Complaint Testimony
- Motion in Limine to Admit Photograph of Victim at time of the incident
- Commonwealth's Motion to preclude the use of prior inconsistent statements as substantive evidence
- Motion in Limine to preclude reference to any alleged bad character or bad reputation of the victim and any alleged prior bad acts or subsequent bad acts of the victim
- Motion in Limine to preclude any alleged bad character or bad reputation evidence of Illiana Depina and alleged prior bad acts or subsequent bad acts of Illiana Depina
- Voire Dire Questions

The Commonwealth reserves the right to supplement this list and file additional Motions in Limine prior to trial.

Defendant intends to present Motions in Limine as allowed by law and procedure.

Objection to Fresh/First Complaint Witness and Request for Instruction

Objection to Photograph

Objection to Preclusion of Bad Acts of both alleged victim and Witness

Notice of Business Records

Motion for Voir Dire Questions

Motion for Jury Instructions

*Defendant reserves right to file additional requests for instruction

(6) The defendant is NOT in custody

(7) An interpreter is necessary for the Commonwealth AND defendant's witnesses.

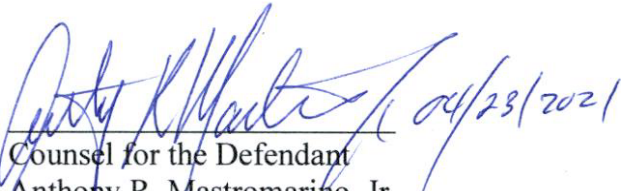
(8) The estimated length of trial is four-six days (including empanelment).

Respectfully submitted
For the Commonwealth,



Matt Friedel

Assistant District Attorney
Bristol County District Attorney's Office
218 South Main Street
Fall River, MA 02721



Counsel for the Defendant
Anthony R. Mastromarino, Jr.
1585 Somerset Ave.
Taunton, MA 02780
508 828 4245

Date: _____

4/27/21

#62

Commonwealth Of Massachusetts
Trial Court Department

Bristol, s.s.

Superior Court

Indictment No. 1873 CR 0436

Commonwealth

v.

Antonio Nascimento-Depina

BRISTOL,SS SUPERIOR COURT
FILED

AUG 08 2022

JENNIFER A. SULLIVAN, ESQ.
CLERK / MAGISTRATE

Motion for Directed Verdict

Now comes the Defendant and moves that this Honorable Court enter a finding of not guilty pursuant to Mass. Rules of Crim. Pro. Rule 25.

IN SUPPORT of this Motion the Defendant states that at the close of the Commonwealth's evidence and viewed in the light most favorable to the Commonwealth, the evidence fails to support each of the elements required for a conviction.

Anthony R. Mastromarino, Jr.

1585 Somerset Ave.

Taunton, MA 02780

(508) 828-4245

B.B.O.# 558198 MA ; 05317 ME

#63

Commonwealth Of Massachusetts

Trial Court Department

Bristol, s.s.

Superior Court

Indictment No. 1873 CR 0436

Commonwealth

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Antonio Nascimento-Depina

BRISTOL, SS SUPERIOR COURT
FILED

AUG 08 2022

JENNIFER A. SULLIVAN, ESQ.
CLERK / MAGISTRATE

Renewed

Motion for Directed Verdict

Now comes the Defendant and moves that this Honorable Court enter a finding of not guilty pursuant to Mass. Rules of Crim. Pro. Rule 25.

IN SUPPORT of this Motion the Defendant states that at the close of all of the evidence the Commonwealth's evidence fails to support each of the elements required BEYOND A REASONABLE DOUBT.

Anthony R. Mastromarino, Jr.

1585 Somerset Ave.

Taunton, MA 02780

(508) 828-4245

B.B.O.# 558198; 05317 ME

#66

Commonwealth of Massachusetts
Trial Court of the Commonwealth
Superior Court Department

Bristol, ss.

Indictment #: 1873CR436-1

Commonwealth

vs.

Antonio Nascimento-Depina,
Defendant

VERDICT SUPERIOR COURT
BRISTOL
FILED

AUG - 9 2022

JENNIFER A. SULLIVAN, ESQ.
CLERK / MAGISTRATE

Rape of Child, Aggravated by Age (265/23A(b)):
(penis in vagina)

We, the Jury unanimously find the defendant, Antonio Nascimento-Depina:

____ Not Guilty

☒ Guilty

I hereby certify that this verdict is the unanimous verdict of all twelve (12) deliberating jurors.



Foreperson of the Jury

8/9/22
Dated:

8-9-22 VERDICTS RECORDED 2:24 pm AM

#67

Commonwealth of Massachusetts
Trial Court of the Commonwealth
Superior Court Department

Bristol, ss.

Indictment #: 1873CR436-2

Commonwealth

vs.

Antonio Nascimento-Depina,
Defendant

VERDICT SLIP
BRISTOL, SS SUPERIOR COURT
FILED

AUG - 9 2022

JENNIFER A. SULLIVAN, ESQ.
CLERK / MAGISTRATE

*Rape of Child, Aggravated by Age (265/23A(b)):
(finger in vagina)*

We, the Jury unanimously find the defendant, Antonio Nascimento-Depina:

____ Not Guilty

X Guilty

I hereby certify that this verdict is the unanimous verdict of all twelve (12) deliberating jurors.



Foreperson of the Jury

8/9/22
Dated:

8-9-22 Verdict Recorded 2:24 pm JAV

#68

Commonwealth of Massachusetts
Trial Court of the Commonwealth
Superior Court Department

Bristol, ss.

Indictment #: 1873CR436-3

Commonwealth

vs.

Antonio Nascimento-Depina,
Defendant

VERDICT SLIP

BRISTOL, SS SUPERIOR COURT
FILED

AUG -9 2022

Indecent Assault and Battery on Child Under 14 (265/13B):
(penis touching vagina)

JENNIFER A. SULLIVAN, ESQ.
CLERK / MAGISTRATE

We, the Jury unanimously find the defendant, Antonio Nascimento-Depina:

☐ Not Guilty

☒ Guilty

I hereby certify that this verdict is the unanimous verdict of all twelve (12) deliberating jurors.



Foreperson of the Jury

8/9/22

Dated:

8-9-22 Verdict Recorded 2:24 PM AM

#69

Commonwealth of Massachusetts
Trial Court of the Commonwealth
Superior Court Department

Bristol, ss.

Indictment #: 1873CR436-4

Commonwealth

vs.

Antonio Nascimento-Depina,
Defendant

VERDICT SLIP

BRISTOL, SS SUPERIOR COURT
FILED

AUG - 9 2022

Indecent Assault and Battery on Child Under 14 (265/13B): JENNIFER A. SULLIVAN, ESQ.
(finger touching vagina) CLERK / MAGISTRATE

We, the Jury unanimously find the defendant, Antonio Nascimento-Depina:

☐ Not Guilty

☒ Guilty

I hereby certify that this verdict is the unanimous verdict of all twelve (12) deliberating jurors.



Foreperson of the Jury

8/9/22

Dated:

MAJ wdh 2:12 PM
8-9-22 VERDICT RECORDED 5:51 PM
8:09-22 VERDICT RECORDED 5:51 PM

#70

Commonwealth of Massachusetts
Trial Court of the Commonwealth
Superior Court Department

Bristol, ss.

Indictment #: 1873CR436-5

Commonwealth

vs.

Antonio Nascimento-Depina,
Defendant

VERDICT SLIP

BRISTOL, SS SUPERIOR COURT
FILED

AUG - 9 2022

*Indecent Assault and Battery on Child Under 14 (265/13B):
(hand on breast)*

JENNIFER A. SULLIVAN, ESQ.
CLERK / MAGISTRATE

We, the Jury unanimously find the defendant, Antonio Nascimento-Depina:

☐ Not Guilty

☒ Guilty

I hereby certify that this verdict is the unanimous verdict of all twelve (12) deliberating jurors.



Foreperson of the Jury

8/9/22
Dated:

8.9.22 Verdict recorded 2:24 pm JSM

Commonwealth Of Massachusetts
Trial Court Department

Bristol, s.s.

Superior Court

Indictment No. 1873 CR 0436

Commonwealth

*

BRISTOL, SS SUPERIOR COURT
FILED

v.

*

AUG 09 2022

*

JENNIFER A. SULLIVAN, ESQ.
CLERK / MAGISTRATE

*

Antonio Nascimento-Depina

*

Notice of Appeal

Now comes the Defendant and hereby gives Notice of Appeal of the Trial. In an effort, to preserve the Defendant's right to appeal this Motion is hereby filed. The Defendant asks that the record be assembled.

08/09/2022

Anthony R. Mastromarino, Jr.

1585 Somerset Ave.

Taunton, MA 02780

(508) 828-4245

B.B.O.# 558198



The Commonwealth of Massachusetts
Department of State Police



CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

TERRENCE M. REIDY
ACTING SECRETARY

Crime Laboratory

124 Acton Street

Maynard, MA 01754

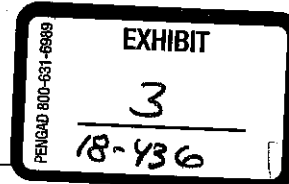
Telephone: (978) 451-3300 Facsimile: (978) 451-3320

CHRISTOPHER S. MASON
COLONEL/SUPERINTENDENT

R. SCOTT WARMINGTON
DEPUTY SUPERINTENDENT

DNA TESTING REPORT 3

This DNA Testing Report 3 supersedes DNA Testing Report 2



CASE INFORMATION

Laboratory Case #: 18-20389 Taunton

Victim(s): [REDACTED]

Suspect(s): Antonio Nascimento-Depina

Other(s): N/A

Report To: Detective Lynne Pina, Taunton Police Department

Report Cc: ADA Matthew Friedel, Bristol County District Attorney's Office

Colleen Sheerin, Bristol County District Attorney's Office

Sandra Pacheco, Bristol County District Attorney's Office

Robert Racette, Bristol County District Attorney's Office

Report Date: August 10, 2021

Agency Case #: 18TAU-20307-AR

Offense Type: Reported Sexual Assault

TESTING SUMMARY

Item #	Sample Description	Sample Analysis
1-4.11.1	Swabs and scrapings of light brown stains on blue blanket - bedroom - 84 Cedar Street, #1 (sperm fraction)	• STR only.
1-4.11.1	Swabs and scrapings of light brown stains on blue blanket - bedroom - 84 Cedar Street, #1 (non-sperm fraction)	• STR only. • STR analysis using the probabilistic genotyping software STRmix was performed.
1-4.11.2	Cutting of light brown stains on blue blanket - bedroom - 84 Cedar Street, #1 (sperm fraction)	• STR only. • STR analysis using the probabilistic genotyping software STRmix was performed.
1-4.11.2	Cutting of light brown stains on blue blanket - bedroom - 84 Cedar Street, #1 (non-sperm fraction)	• STR only.

RESULTS

The DNA sample(s) were amplified using the Promega Powerplex® Fusion 6C System and electrophoresed on an Applied Biosystems 3500 and/or 3500xl genetic analyzer for STR fragment analysis. The Promega Powerplex® Fusion 6C kit is utilized to profile twenty-six genetic loci plus Amelogenin (sex indicator): D3S1358, D1S1656, D2S441, D10S1248, D13S317, Penta E, D16S539, D18S51, D2S1338, CSF1PO, Penta D, TH01, vWA, D21S11, D7S820, D5S818, TPOX, D8S1179, D12S391, D19S433, SE33, D22S1045, DYS391, FGA, DYS576, and DYS570.

STR DNA profiles were generated for the following exemplar sample(s):

Item # 2-1.1 Antonio Nascimento-Depina

Item # 3-1.1 Mira Depina Alves

1. Item # 1-4.11.1: Swabs and scrapings of light brown stains on blue blanket - bedroom - 84 Cedar Street, #1

Sperm Fraction:

A male DNA profile was obtained.

- Antonio Nascimento-Depina is consistent with this profile. The expected frequency of occurrence of this profile is approximately 1 in 12.06 decillion unrelated individuals.
- [REDACTED] is not consistent with this profile.

Non-sperm Fraction:

The DNA profile is a mixture, including male DNA. Assuming three contributors and that the DNA profile from the sperm fraction is one of the contributors:

- The DNA profile from this item is estimated to be 240 times more likely if the DNA profile originated from the DNA profile from the sperm fraction and two unknown individuals, unrelated to [REDACTED] than if it originated from [REDACTED] the DNA profile from the sperm fraction and an unknown individual.

The MSPCL DNA Unit validation studies showed exclusions for known contributors in the inverse likelihood ratio range (1/LR) of ≥ 2 to 1000. Adventitious support could be attributed to this conclusion.

2. Item # 1-4.11.2: Cutting of light brown stains on blue blanket - bedroom - 84 Cedar Street, #1

Sperm Fraction:

The DNA profile is a mixture, including male DNA. Assuming three contributors and that the DNA profile from the non-sperm fraction is one of the contributors:

- The DNA profile from this item is at least 120 nonillion times more likely if the DNA profile originated from the DNA profile from the non-sperm fraction, Antonio Nascimento-Depina and an unknown individual than if it originated from the DNA profile from the non-sperm fraction and two unknown individuals, unrelated to Antonio Nascimento-Depina. This provides support for an inclusion.
- [REDACTED] is excluded from this DNA profile.

Non-sperm Fraction:

A female DNA profile was obtained.

- Antonio Nascimento-Depina and [REDACTED] do not match this DNA profile.

CODIS DISPOSITION

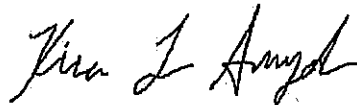
Item #	Description	Upload Status	Suitable for comparison	Comments
1-4.11.1	Swabs and scrapings of light brown stains on blue blanket - bedroom - 84 Cedar Street, #1 (sperm fraction)	No Upload	Yes	Ineligible
1-4.11.2	Cutting of light brown stains on blue blanket - bedroom - 84 Cedar Street, #1 (sperm fraction, C2)	No Upload	Yes	Ineligible

ADDITIONAL COMMENTS

1. The remaining biological evidence for the item(s) tested will be retained indefinitely at the laboratory. However, with the appropriate approval, the biological evidence was consumed during analysis for the following item(s): Item # 1-4.11.1, 1-4.11.2.
2. The National Institute of Standards and Technology's published database is utilized in the statistical calculations. Hill, C.R., Duewer, D.L., Kline, M.C., Coble, M.D., Butler, J.M. (2013) U.S. population data for 29 autosomal STR loci. *Forensic Sci. Int. Genet.* 7: e82-e83. Revised data received on August 10, 2017.
3. STRmix software V2.5.11 was utilized.
4. STR profile interpretation and statistical analysis is performed with STRmix software.
5. STRmix calculates a likelihood ratio (LR) statistical calculation using competing hypotheses (i.e. the reference contributed to the DNA profile rather than an unknown individual contributed to the DNA profile, unrelated to the reference).
6. The likelihood ratios referenced in this report are based upon a range of propositions that can explain the evidence. Either interested party to this case, prosecution and/or defense, may request one additional likelihood ratio that incorporates an additional proposition more accurately representing their position. All requests must be submitted in a timely manner, must be reasonable given the test results, and must be within the capability and validated application of the program used.
7. STR statistical results represent the most conservative of the values calculated for four population groups: African American, Asian, Caucasian, and Hispanic.
8. Comparative analysis requires the submission of the appropriate standard(s).
9. Further statistical calculations can be made if necessary and requested.
10. If further analysis is required, please contact the Case Management Unit at (978) 451-3440.

SIGNATURE

This report reflects the test results, conclusions, interpretations, and/or the findings of the analyst as indicated by the signature below. Reported results relate only to the items tested, sampled, certified, calibrated, or data processed.



Kira L. Snyder

Forensic Scientist II

Massachusetts State Police Crime Laboratory

This report was electronically signed using password protected software.

CASE #/TOWN: 18-20389 / Taunton
Interpretation Table

Item #	Sample Description	DNA Profile Description	Reference(s) for Comparison	Hypothesis/Interpretation	Statistical Weighting
1-4.11.1	Swabs and scrapings of light brown stains on blue blanket - bedroom - 84 Cedar Street, #1 (non-sperm fraction)	Mixture of 3 contributors	[REDACTED]	H ₁ : Assuming the DNA profile from the sperm fraction, [REDACTED] is included as a contributor H ₂ : Assuming the DNA profile from the sperm fraction, [REDACTED] is not included as a contributor	240 (in favor of H ₂)
1-4.11.2	Cutting of light brown stains on blue blanket - bedroom - 84 Cedar Street, #1 (sperm fraction)	Mixture of 3 contributors	Antonio Nascimento-Depina	H ₁ : Assuming the DNA profile from the non-sperm fraction, Antonio Nascimento-Depina is included as a contributor H ₂ : Assuming the DNA profile from the non-sperm fraction, Antonio Nascimento-Depina is not included as a contributor	120 nonillion (in favor of H ₁)
			[REDACTED]	H ₁ : Assuming the DNA profile from the non-sperm fraction, [REDACTED] is included as a contributor H ₂ : Assuming the DNA profile from the non-sperm fraction, [REDACTED] is not included as a contributor	Excluded