

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

No. 11601

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ADAM SIMPKINS,  
Petitioner-Appellant

v.

COMMONWEALTH  
Respondent-Appellee

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ON RESERVATION AND REPORT FROM  
THE SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

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PETITIONER-APPELLANT'S  
BRIEF AND APPENDIX

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## STATEMENT OF THE ISSUES

1. Was the petitioner denied his state double jeopardy rights and his federal constitutional right not to twice be placed in jeopardy when the trial court denied his motion to dismiss concerning the Commonwealth's failure to produce sufficient evidence on the murder and armed assault indictments?

2. Was the petitioner denied his state double jeopardy rights and his federal constitutional right not to twice be placed in jeopardy when the trial court denied his motion to dismiss concerning his conviction for accessory after?

## STATEMENT OF THE CASE

A grand jury sitting in Suffolk County returned a series of indictments against the petitioner including an indictment for the murder of Cordell McAfee, an indictment for the armed assault with intent to murder of Christopher Jones, an indictment for accessory after the fact to the murder of Cordell McAfee, and possession of firearms.<sup>1</sup>

The case was tried before the Honorable Judge Giles and a jury beginning on October 17, 2012; the

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<sup>1</sup> The drug charges were severed for purposes of trial, remain pending, and are not relevant to this appeal.

case went to the jury on November 7, 2012. When the Commonwealth rested its case, the petitioner moved for required findings of not guilty on the murder, armed assault to murder, and accessory after murder indictments. See App. at 20. Said motion was denied. See Tr.13: 162.

The jury did not return verdicts on the murder and armed assault charges, but found the petitioner guilty of accessory after the fact to murder and the firearm charges.

On the date set for sentencing on the accessory after and firearm charges, the Commonwealth announced its intention to retry the petitioner on the murder and armed assault to murder charges, and requested that the petitioner not be sentenced until after a second trial.

The petitioner filed a motion to dismiss said indictments on the same two double jeopardy grounds that he asserts here, (1) that the motion for required findings should have been allowed, and (2) that the conviction for accessory after has collateral estoppel effect barring retrial on the murder and armed assault to murder charges. See App. at 28. The trial court denied that motion and refused to sentence the

petitioner on the indictments for which he stood convicted. The petitioner filed a notice of appeal and duly filed his G.L. c.211, §3 petition to the Supreme Judicial Court for Suffolk County. On December 12, 2013 the Single Justice reserved and reported said petition to the Full Court. App. at 30.

### **STATEMENT OF THE FACTS**

#### **A. The Commonwealth's Case.**

It was the Commonwealth's theory of the case that Adam Simpkins was neither of the two shooters who killed Cordell McAfee and shot at Christopher Jones; rather, the Commonwealth maintained that the petitioner recruited or encouraged the two shooters before the attack (murder and armed assault charges) and aided them after the attack (accessory after murder charge). See Tr.13: 140, 149.

A review of the prosecutor's closing argument, which marshaled his evidence in the light most favorable to the Commonwealth, demonstrates that the evidence was legally insufficient on the charges of murder and armed assault to murder.

"There were two shooters. The forensics tell you that. The witnesses tell you that, and circumstantial evidence tells you that. Those two shooters were

wearing two, cream-colored hoodies." Tr.14: 77. Mr. Perkins is identified as one person and the second person is now in 10 St. Mark's for a grand total of five people, right? Perkins, Simpkins, Taylor, Kindell and Powell. You know Mr. Simpkins wasn't one of the two shooters because there's no evidence that there was. That leaves the other three, Kindell, Taylor and Powell. I do not know which of those three men was the one that ran into 10 St. Mark's along with Mr. Perkins." Tr.14: 83-4.

"Minutes after the shooting in this case, the two murder weapons and the two hoodies ended up in [10 St. Mark's Road]."<sup>2</sup> Tr.14: 80.

"So here I am asking you to find Mr. Simpkins guilty of murder, even though I know or I suggest to you that the Commonwealth has failed to prove that he's one of the shooters. And it's on the theory of his knowing participation with the requisite criminal intent for murder. He is guilty of murder not because he fired the gun, but because he participated in the crime to such a degree that he might as well be guilty

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<sup>2</sup>The only "incriminating" fact left out of the closing argument was that the defendant's DNA was part of a mixture of DNA found on one of those two sweatshirts.

of murder. He might as well be the person who fired the gun." Tr.14: 84.

"What do you know about Mr. Simpkins? Well, you know he was involved a week before in an incident at Dunkin' Donuts. And I don't care whether they want to call it an incident, a dust-up. You call it what yow want to, confrontation, whatever the case may be. It was some kind of thing where Mr. Simpkins was identified by Christopher Jones who wrote on the back of his picture, 'This is the dude we got into it with at Dunkin' Donuts. He's the one that drives the white Ford Taurus.'" Tr.14: 84-5.

"And the exchange went as follows, five people coming up to Chris Jones, 'What's up?' Chris Jones' response, 'Ain't shit up.' Cordell McAfee gets out of the car and says, 'Hey, is there a problem here?' And for some reason it all just dissipates...And Mr. Simpkins then along with those other four got in the car and drove off." Tr.14: 85.

"One week later, one week later Cordell McAfee was dead on the porch of 31 Roseland Street and Christopher Jones was shot at, and what was the thing that Chris Jones said the two shooters said right before they sprayed that porch down with bullets?"

Anyone remember? 'What's up now?' 'What's up now?'"

Tr.14: 85.

"What else do you know about Mr. Simpkins?" The prosecutor then explained that his fingerprints were on the foil that was used to "hide one of the guns. It was on the foil used to hide the cylinder of one of the guns, and they were all over that foil." Tr.14: 86. "Now, it's just -- it's not just about hiding the guns. It's about the fact that they were hidden in a place that only the person who lived there would know, back behind a dryer, up in a hole in a ceiling. So lest you think that somebody else was playing some sort of major role in the hiding of these guns, I would suggest to you that it was Mr. Simpkins." Tr.14: 86.

"Did anyone pick up on how these guns were hidden, besides the foil, besides the cinnamon, besides even the place where they were found? Did anybody pick up on any of this? Who were these guns being hidden from? Betty Simpkins, Adam Simpkins' brothers? If that was the case, why didn't he just take the guns and stick them under his bed and say, listen, don't come into my room? These guns were not being hidden from family. They were being hidden from

the police. And the bottom line is they weren't being hidden. They were being disposed of. When you hide a gun, you want to be able to get back at it. Did you hear what Detective Callahan said that he had to do to get the guns out of that wall? They had to pull the dryer out, kick a hole in the wall and pull it out from the bottom." Tr.14: 86-7. "Those guns were never meant to be found." Tr.14: 88.

Consistent with the Commonwealth's theory, the trial court instructed as follows:

"Now the Commonwealth is not required to prove the defendant Adam Simpkins himself performed the act that caused Mr. McAfee's death and/or committed the armed assault on Mr. Jones... However, to establish that Mr. Simpkins is guilty of murder and/or armed assault with intent to murder, the Commonwealth must prove two things beyond a reasonable doubt. First, the Commonwealth must prove Mr. Simpkins knowingly participated in the commission of the murder of Cordell McAfee and/or the armed assault with intent to murder of Christopher Jones. Second, the Commonwealth must prove that Mr. Simpkins did so with the intent required. Such knowing participation by Mr. Simpkins may take any of several forms. It may take the form of aiding or assisting another in those acts. It may take the form of Mr. Simpkins asking or encouraging another person to commit the crimes, or helping to plan the commission of the crimes. Alternatively, it may take the form of agreeing to provide aid or assistance in committing the crimes or in escaping, if such help becomes necessary." Tr.14: 135-36.

## **B. Collateral Estoppel.**

The trial court, prosecution and defense agreed that the petitioner could not properly be convicted of a crime and of being an accessory after the fact to the same crime. See discussion Tr.1: 107-12. Thus the trial court told the jury in her preliminary charge (without objection by any party) that the petitioner could not be convicted of both murder and accessory after the fact to murder. Tr.4: 52. Defense counsel repeated this concept in her opening statement. Tr.4: 97. In the trial court's final instructions to the jury she reiterated that the petitioner could not be convicted of both charges.

"Now, defendant Adam Simpkins is also charged with being an accessory after the fact of murder. Under our law, he cannot be convicted of both the crime of murder and the crime of being an accessory after the fact of murder." Tr.14: 139.

## **ARGUMENT**

### **I. THE PETITIONER WAS DENIED HIS DOUBLE JEOPARDY RIGHTS WHEN THE TRIAL COURT DENIED HIS MOTION FOR NOT GUILTY VERDICTS ON THE MURDER AND ARMED ASSAULT INDICTMENTS.**

Our state and federal constitutions require the prosecutor to produce sufficient evidence so that a reasonable juror could find proof beyond a reasonable doubt, when viewing the evidence in the light most

favorable to the prosecution. See *Jackson v. Virginia*, 443 U.S. 307 (1979); *Commonwealth v. Latimore*, 378 Mass. 671 (1979). At the conclusion of the Commonwealth's case the parties argued the petitioner's motion for required findings of not guilty. The trial court ruled as follows:

"There's clearly no question that there is abundant evidence that Mr. Simpkins secreted items used in these crimes and also worn by at least one of the perpetrators of these crimes. The issue is one of knowledge. The Commonwealth argues that one can impute knowledge to Mr. Simpkins from his participation in the confrontation two weeks earlier. Notwithstanding Ms. O'Brien's contention that it really wasn't a confrontation, there certainly was sufficient evidence adduced at this trial that there was some sort of confrontation. I frankly find this evidence thin that one can infer knowledge on Mr. Simpkins' part of the ensuing murder two weeks later from his confrontation of Mr. McAfee at Dunkin' Donuts. However, the issue is not whether I think it's thin. The issue is whether as a matter of law, there is some evidence. I consider this to be a very close call, but under that circumstance of my finding it to be a close call, I have to find against Mr. Simpkins and for the Commonwealth. Unlike my rulings relative to Mr. Powell and Mr. Taylor, I am not comfortable in saying that as a matter of law, there is not one scintilla<sup>3</sup> of evidence to prove that Mr. Simpkins had knowledge of the ensuing

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<sup>3</sup> This is the wrong standard; but, the issue now is whether the evidence was sufficient, not the standard employed by the trial court. See *Commonwealth v. Coleman*, 30 Mass. App. Ct. 229, 234 n.5 (1991).

murder. Also factoring in the unmistakable circumstance that Mr. Simpkins has his post conviction remedies. I am going to have to deny, Ms. O'Brien, your motion for required finding of not guilty, and you certainly can renew your arguments in any post conviction setting." Tr.13: 161-63.

On appellate review, a court considers whether the evidence supports a finding that the defendant knowingly participated in the commission of the crime charged, alone or with others, with the intent required for that offense. *Commonwealth v. Norris*, 462 Mass. 131, 138-139 (2012). In the unusual circumstances of this case, see and compare *Commonwealth v. Akara*, 465 Mass. 245, 254 (2013), where the evidence does not support a conclusion that the petitioner fired the weapon, a reviewing court must determine whether the evidence, considered in the light most favorable to the Commonwealth, supports the conclusion that the petitioner, although not the shooter, participated in and shared the requisite intent to commit the crime. *Commonwealth v. Zanetti*, 454 Mass. 449, 455-456 (2009).

There is no such evidence in this case. See *Commonwealth v. Swafford*, 441 Mass. 329, 339 (2004) (motive to commit the crime and association with one

who committed the crime does not prove participation). There was only evidence that the petitioner was an accessory after the fact.

Before the Single Justice, the Commonwealth asserted that "there was evidence that the [petitioner] inferably asked, encouraged, and helped to plan the shooting." See Commonwealth's Memorandum, p. 16. This assertion is constructed on the foundation that Simpkins was the only person identified as being present at the Dunkin Donuts incident, that the phrase "what's up?" was used at that incident and the phrase "what's up, now?" was used at the shooting, and thus inferentially Simpkins told the shooters about the Dunkin Donuts incident and was part of the plan. See Commonwealth's Memorandum, pp. 16-17. There are so many problems with this chain of inferences that it is clear that the Commonwealth had no case.

First, it was the Commonwealth's position at trial that just because the two shooters were not identified as part of the group at Dunkin Donuts, that did not mean they were not at the Dunkin Donuts

incident.<sup>4</sup> See Tr.5: 111 (trial prosecutor tells trial court that to say the shooters weren't there "would be going a little bit too far"). The incident involved "a few of them," and Simpkins was not identified as the person who said what's up. See Tr.5: 104.

Second, the phrase "what's up?" is in such common usage as to be virtually meaningless as a "signature" from which one could infer a connection from one incident to another.

Third, even if one were to guess that neither shooter was present at Dunkin Donuts and that the shooting and Dunkin Donuts incident were intimately connected, it would be impossible to determine from that information who, among the "few of them" spoke to the shooters, let alone whether that person or persons asked them to commit a murder.

The Commonwealth does argue that the choice of Simpkins as "the person" who informed the shooters is

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<sup>4</sup> Christopher Jones, the identifying witness, said he knew Simpkins from the neighborhood prior to the Dunkin Donuts incident. Tr.5: 156-57. Thus the fact that he could pick out the person he already knew says very little about who the unknown persons were. Tr.5: 156-57. The white Ford Taurus seen at the Dunkin Donuts and in front of 10 St. Mark's on the day of the shooting belonged to co-defendant Lavonrence Perkins' family. See Tr.8:171.

buttressed with other evidence, and particularly that five minutes before the shooting Simpkins got out of the white Ford Taurus<sup>5</sup> and went into 10 St. Marks and immediately after the shooting the shooters ran to the defendant's apartment and he let them in, as if he were part of the plan. See Commonwealth's Memorandum, pp. 18-19. The Commonwealth makes numerous transcript references, but none of those references support this claim since there was no such testimony at trial.<sup>6</sup>

The motion for required findings and the motion to dismiss should have been allowed.

**II. THE DOCTRINE OF COLLATERAL ESTOPPEL BARS A SECOND TRIAL OF THE PETITIONER ON THE MURDER AND ARMED ASSAULT CHARGES.**

The applicable principles are well established: "[A] defendant cannot be tried by the same sovereign for an offense the conviction of which would require the readjudication of a factual issue which previously has been determined in his or her favor....

[C]ollateral estoppel requires the concurrence of

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<sup>5</sup> He got out of that car with a group and they all went inside. No one came out of the house after that. See Tr.11:130.

<sup>6</sup> The witness who saw the defendant get out of the Taurus also claimed that the two shooters had walked past 10 St. Marks in the direction of the shooting before the Taurus arrived. See Tr.11:128.

three circumstances: (1) a common factual issue; (2) a prior determination of that issue in litigation between the same parties; and (3) a showing that the determination was in favor of the party seeking to raise the estoppel bar." *Commonwealth v. Lopez*, 383 Mass. 497, 499 (1981); see also *Ashe v. Swenson*, 397 U.S. 436, 443 (1980).

A defendant may not properly be convicted of a crime and of being an accessory after the fact to the same crime. *Commonwealth v. Gajka*, 425 Mass. 751, 754 (1997); *Commonwealth v. Berryman*, 359 Mass. 127, 129 (1971). The concept of accessory after was not designed to add further punishment to every criminal who escaped the scene of the crime; but rather, to punish those who aided those criminals to avoid detection after the fact. To be guilty of an accessory after the fact charge one must aid the "knowing participant or participants"; to be guilty of the underlying crime one must be a knowing participant. A jury asked to choose between the two charges must decide whether the defendant under consideration was or was not a knowing participant in the underlying crime.

In her instructions, the trial court explained the first element that the Commonwealth would have to prove to obtain a conviction for accessory after the fact to murder. "First, that the [petitioner] assisted the perpetrator of the murder following the commission of the crime." Tr.14: 139-40.

This jury determined that the petitioner aided the perpetrator following commission of the murder, and thus necessarily found that the petitioner was not a perpetrator. To allow the Commonwealth to relitigate the issue of whether the petitioner was a perpetrator of the murder with a second jury would violate double jeopardy. It must be pointed out that this jury did not return inconsistent verdicts. See and compare *Commonwealth v. Gajka*, supra. It did exactly as instructed.

Given the circumstances here, the doctrine of collateral estoppel also applies to the armed assault to murder charge. The two shootings were completely intertwined; if the petitioner was not a knowing participant in the shooting that killed McAfee, he was not a knowing participant in the shooting at Jones. See *Harris v. Washington*, 404 U.S. 55 (1971).

The motion to dismiss should have been allowed on this ground.

**CONCLUSION**

For all the foregoing reasons, the petitioner's indictments for murder and armed assault should be dismissed and the case remanded to the Superior Court for sentencing on the indictment for accessory after the fact to murder.

Respectfully submitted,  
By his attorneys,



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**CERTIFICATE OF SERVICE**

I, Robert L. Sheketoff, hereby certify that on this 10th day of February, 2014, I served two copies of the petitioner-appellant's BRIEF AND APPENDIX by U.S. First-Class Mail, postage prepaid, as follows:, ADA Cailin Campbell, Suffolk County District Attorney's Office, One Bullfinch Place, Boston, MA 02114.



Robert L. Sheketoff

**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 16 (k) counsel for the petitioner-appellant hereby certifies that this brief complies with the rules of court that pertain to the filing of briefs.



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Robert L. Sheketoff

## ADDENDUM

The Fifth Amendment provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment provides in relevant part:

SECTION I. ...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article 12 of the Declaration of Rights provides in relevant part:

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

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Commonwealth of Massachusetts  
SUFFOLK SUPERIOR COURT

Case Summary  
Criminal Docket

SUCR2011-10142  
Commonwealth v Simpkins, Adam

<b>File Date</b>	02/16/2011	<b>Status</b>	Active (actv)
<b>Status Date</b>	04/25/2013	<b>Session</b>	6 - Criminal 6 Ctrm 906
<b>Jury Trial</b>	Unknown	<b>Origin</b>	1 - Indictment
<b>Lead Case</b>	SUCR2011-10438		

<b>Arraignment</b>	02/22/2011	<b>Track</b>	C - Most Complex	<b>Final PTC</b>	03/10/2012
<b>Disp. Deadline</b>	03/24/2012	<b>Deadline Status</b>	Active since return date	<b>Status Date</b>	03/25/2011
<b>Pro Se Deft</b>	No	<b>Custody Status</b>	Middlesex County Jail (Cambridge)	<b>Start Date</b>	11/28/2012
<b>Weapon</b>	Hand gun	<b>Substance</b>	Class B	<b>Prior Record</b>	Unknown

OFFENSES

Num	Offense	Code	Town	Status	Status Date
1	06/07/2010	274/4	Boston	Guilty verdict	11/15/2012
	ACCESSORY AFTER THE FACT c274 s4				
2	06/07/2010	269/10/G	Boston	Guilty verdict	11/15/2012
	FIREARM WITHOUT FID CARD, POSSESS c269 s10(h)				
3	06/07/2010	269/10/G	Boston	Guilty verdict	11/15/2012
	FIREARM WITHOUT FID CARD, POSSESS c269 s10(h)				
4	06/07/2010	269/10/G	Boston	Not guilty verdict	11/15/2012
	FIREARM WITHOUT FID CARD, POSSESS c269 s10(h)				
5	06/07/2010	94C/32E/A	Boston	Plea of not guilty	02/22/2011
	COCAINE, TRAFFICKING IN c94C s32E(b)				
6	06/07/2010	94C/32J	Boston	Plea of not guilty	02/22/2011
	DRUG VIOLATION NEAR SCHOOL/PARK c94C s32J				
7	06/07/2010	94C/32C/C	Boston	Nolle prosequi	10/17/2012
	DRUG, POSSESS TO DISTRIB CLASS D c94C s32C(a)				
8	06/07/2010	94C/32J	Boston	Nolle prosequi	10/17/2012
	DRUG VIOLATION NEAR SCHOOL/PARK c94C s32J				
9	06/07/2010	265/1		Plea of not guilty	05/12/2011
	MURDER c265 s1				
10	06/07/2010	265/18/C		Plea of not guilty	05/12/2011
	ASSAULT TO MURDER, ARMED c265 s18(b)				

PARTIES

<b>Plaintiff</b> Commonwealth Gender: Unknown Active 02/16/2011	<b>District Atty's Office 560065</b> Joshua I Wall Suffolk County District Attys Office 1 Bulfinch Place 3rd floor Boston, MA 02114 Phone: 617-619-4000 Fax: 617-619-4009 Withdrawn 02/18/2011
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Commonwealth of Massachusetts  
SUFFOLK SUPERIOR COURT

Case Summary  
Criminal Docket

**SUCR2011-10142**  
**Commonwealth v Simpkins, Adam**

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**Defendant**

Adam Simpkins  
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DOB: 10/10/1988  
Gender: Male  
CC#100244597  
Active 02/16/2011

**Commonwealth of Massachusetts  
SUFFOLK SUPERIOR COURT  
Case Summary  
Criminal Docket**

**SUCR2011-10142  
Commonwealth v Simpkins, Adam**

	<p><b>Private Counsel 661508</b>                  Kirsten M. O'Brien                  Law Office of Robert L. Sheketof                  One McKinley Square                  Boston, MA 02109                  Phone: 617-367-7088                  Fax: 617-723-1710                  Active 09/19/2011 Notify</p>
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**ENTRIES**

<b>Date</b>	<b>Paper</b>	<b>Text</b>
02/16/2011	1.0	Indictment returned
02/16/2011	2.0	MOTION by Commonwealth for arrest warrant to issue; filed & allowed McIntyre, J
02/16/2011		Warrant on indictment issued
02/16/2011		Warrant was entered onto the Warrant Management System 2/16/2011
02/18/2011		Defendant not present, hearing continued until 2/22/2011 re: arraignment.
02/18/2011	3.0	Commonwealth files statement of the case. Wilson, Mag - G. Edsen, ADA - ERD/JAVS - H. Hakala, Attorney
02/22/2011		Defendant brought into court. Warrant Recalled.
02/22/2011	3.1	Appearance of Deft's Atty: Harold H Hakala
02/22/2011		Deft arraigned before Court
02/22/2011		Deft waives reading of indictment
02/22/2011		RE Offense 1:Plea of not guilty
02/22/2011		RE Offense 2:Plea of not guilty
02/22/2011		RE Offense 3:Plea of not guilty
02/22/2011		RE Offense 4:Plea of not guilty
02/22/2011		RE Offense 5:Plea of not guilty
02/22/2011		RE Offense 6:Plea of not guilty
02/22/2011		RE Offense 7:Plea of not guilty
02/22/2011		RE Offense 8:Plea of not guilty
02/22/2011		Deft notified of right to request drug exam
02/22/2011		Bail set: \$3,500,000.00 Surety or \$350,000.00 Cash w/o/p. Bail warning read. Mittimus issued.
02/22/2011		Continued to 3/25/2011 for hearing on PTC/Setting of Tracking Order. (Gary D Wilson, Magistrate) - G. Lundgren, ADA - ERD/JAVS - H. Hakala, Attorney
02/22/2011		Warrant canceled on the Warrant Management System 2/22/2011
02/22/2011		Assigned to Track "B" see scheduling order
03/25/2011		Defendant brought into court. Case referred to the Justice Session this day for hrg on Motion.
03/25/2011		Tracking deadlines Active since return date
03/25/2011		Case Tracking scheduling order (Gary D Wilson, Magistrate) mailed 3/25/2011
03/25/2011		Continued to 5/12/2011 for hearing on PTC
03/25/2011		Continued to 11/16/2011 for hearing on FPTH

**Commonwealth of Massachusetts  
SUFFOLK SUPERIOR COURT  
Case Summary  
Criminal Docket**

**SUCR2011-10142  
Commonwealth v Simpkins, Adam**

Date	Paper	Text
03/25/2011		Continued to 12/6/2011 for hearing on PTD
03/25/2011	3.2	Commonwealth files first notice of discovery.
03/25/2011	4.0	Commonwealth files motion for taking of biological sample of defendatn w/a memorandum of law in support thereof. (Gary D Wilson, Magistrate) - G. Lundgren, ADA - ERD/JAVS - H. Hakala, Attorney
04/05/2011		Defendant not present, case continued until 4/6/2011 by agreement for hearing re: video bail (Jail List) Ball, J.
04/06/2011		Hearing on bail held by Video Conference on 4/6/2011
04/06/2011		Defendant's oral motion for reduction of bail, after hearing, denied. Ball, J - G. Lundgren, ADA - ERD - H. Hakala, Attorney
05/09/2011	5.0	Indictment returned as to offense #009 and #010
05/11/2011	6.0	Commonwealth files Second notice of discovery
05/12/2011	7.0	Order of notice of finding of murder indictment w/return of service on Deft received from the Sheriff and filed.
05/12/2011		Defendant brought into court. Warrant Recalled.
05/12/2011		Appearance of Deft's Atty: Harold H Hakala
05/12/2011		Deft arraigned before Court. Indictment Read as to Offense #009.
05/12/2011		RE Offense 9:Plea of not guilty
05/12/2011		Deft waives reading of indictment as to Offense #010.
05/12/2011		RE Offense 10:Plea of not guilty
05/12/2011		Prior Order of Bail Revoked.
05/12/2011		Mittimus without bail issued to Suffolk County Jail (Nashua Street) w/o/p. Mittimus issued.
05/12/2011	8.0	Commonwealth files statement of the case.
05/12/2011		Assigned to track "C" see scheduling order
05/12/2011		Case Tracking scheduling order mailed 5/12/2011
05/12/2011		Continued to 5/24/2011 for hearing on Counsel.
05/12/2011		Continued to 6/2/2011 for hearing on PTC & Commonwealth Motion for Protective Order.
05/12/2011		Continued to 11/15/2011 for hearing on PTH
05/12/2011		Continued to 4/3/2012 for hearing on FPTH
05/12/2011		Continued to 5/7/2012 for hearing on PTD. Wilson, Mag - G. Lundgren, ADA - ERD/JAVS - H. Hakala, Attorney
05/12/2011		Warrant canceled on the Warrant Management System 5/12/2011
05/12/2011	9.0	Commonwealth files: Third Notice of Discovery
05/24/2011		Defendant brought into court.
05/24/2011		Appearance of Deft's Atty: John P Moss - appointed by CPCS pursuant to Mass General Laws Chapter 211D, Section 8.
05/24/2011		Withdrawal of appearance requested by Harold H Hakala, allowed. Wilson, Mag - G.Ogus, ADA - ERD/JAVS - J. Moss, Attorney
05/25/2011	10.0	Commonwealth files Motion for a protective order
05/25/2011	11.0	Commonwealth files Motion to file under seal the memorandum in support of its motion for a protective order - Allowed. Gaziano, RAJ.
06/02/2011		Defendant brought into court.
06/02/2011		Hearing held re: Commonwealth's motion for protective order (P#10). After hearing, motion taken under advisement. - Brady, J. - G.

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Date	Paper	Text
06/03/2011	12.0	Lundgren and D. McGowan, ADAs - J. Moss, Atty - N. McCann, CR Protective Order issued this date by the Court. (06/03/2011) (Patrick F. Brady, Justice)
06/03/2011		re: Commonwealth's MOTION (P#10) - motion allowed; see Protective Order (P#12) issued by the Court this date (06/03/2011) (Patrick F. Brady, Justice). Copies mailed 6/3/2011
06/07/2011	13.0	Commonwealth files: Motion for a Protective Order
07/14/2011		Defendant not in Court
07/14/2011	14.0	Commonwealth files Sixth notice of discovery
07/14/2011		Continued to 7/27/2011 for a hearing Re: Motions at 9:00 am (Diane M Kottmyer, Justice) G. Lundgren, ADA., J. Moss, Atty., C. LaValle, Court Reporter Jail List
07/14/2011	15.0	Order modifying June 3, 2011 protective order, filed
07/26/2011	16.0	Commonwealth files Motion to Place Court Filings under Seal and Replace with Properly Redacted Versions.
07/27/2011		Defendant brought into court. PTC held.
07/27/2011	17.0	Pre-trial conference report filed
07/27/2011	18.0	Commonwealth files Seventh Notice of Discovery
07/27/2011		Hearing on Protective Order held before Kottmyer, J. Parties to file amended proposed order.
07/27/2011		Continued to 9/16/2011 by agreement at 3:00 PM for hearing on discovery motions and 10/11/2011 for hearing on motion to dismiss at 9:00 AM in the 9th Criminal Session (Ctrm 713) Motions to filed by 09/12/2011 (Jail List) Kottmyer, J - G. Lundgren, ADA - A. Pollier, Court Reporter - J. Moss, Attorney
07/28/2011	19.0	ORDER, filed and IMPOUNDED by the Court, Kottmyer, J. (Parties notified with copy)
07/28/2011	20.0	ORDER (Redacted) filed by the Court, Kottmyer, J. (Parties notified with copy)
07/28/2011		ERROR
08/08/2011	21.0	Commonwealth files: Fourth Notice of Discovery
08/08/2011	22.0	Commonwealth files: Fifth Notice of Discovery
08/16/2011	23.0	Commonwealth files: Eighth Notice of Discovery
09/16/2011		Brought into court.
09/16/2011	24.0	Appearance of Deft's Atty: Kristen Wenge
09/16/2011	25.0	Attorney John Moss's Motion to Withdraw filed and allowed after hearing.
09/16/2011		Hearing held re: Commonwealth's Response to Co- Defendant Perkins' Motion for Discovery. (Paper #18 in SUCR2011-10438). See record.
09/16/2011		Case continued by agreement as follows: 11/18/11 for filing of Motion to Suppress; 12/14/11 for filing of Commonwealth's Opposition; and 12/19/11-12/20/11 for Hearing on Motion to Suppress. Kottmyer, J. - G. Lundgren, ADA - D. McGowan, ADA - J. Moss, Atty - K. Wenge, Atty - E. Tyler, CR.
10/28/2011	26.0	Commonwealth files ninth notice of discovery
11/14/2011	27.0	Deft files motion to dismiss with affidavit and memorandum in support

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Date	Paper	Text
	27.0	thereof
12/16/2011		Brought into Court. Hearing on motion (P#27) to dismiss, held, matter taken under advisement. Hogan, J. - G. Lundgren & D. McGowan, ADA's - JAVS - K. Wenge, Atty,
12/16/2011	28.0	Commonwealth files opposition to defendant's motion to dismiss
12/16/2011	29.0	Deft files motion to suppress with affidavit in support thereof
12/16/2011	30.0	Deft files motion to suppress (warrantless) with affidavit in support thereof
12/16/2011	31.0	Commonwealth files Opposition to Defendant's motion to dismiss indictment
12/22/2011	32.0	Commonwealth files tenth notice of discovery
01/18/2012	33.0	Commonwealth files opposition to Deft's motion to suppress the stop of the Deft
01/18/2012	34.0	Commonwealth files opposition to the Deft's motion to suppress (search warrant)
01/23/2012		Defendant brought into court .Hearing re paper #29 and paper #30
01/23/2012		After hearing motions to suppress , paper #29 and paper # 30 taken under advisement. Sanders,J; G.LundgrenADA; D.McGowan,ADA; K.Wenge,Atty; W.Greenlaw,Court reporter
02/13/2012		Defendant not present, case continued until 2/14/2012 at 2:00 PM for video bail. (Jail List) McIntyre, J - K. Wenge, Attorney (via telephone)
02/14/2012		Defendant not present - hearing re: bail. Withdrawn at the request of the deft without prejudice. McIntyre, J - K. Wenge, Attorney
02/27/2012	35.0	MEMORANDUM OF DECISION & ORDER ON DEFT'S MOTIONS TO SUPPRESS DENIED: 2/27/2012, (Janet L.Sanders, Justice)
02/29/2012	36.0	Defendant files MOTION to continue
03/08/2012		Defendant present, brought into court. Hearing re: P#36 held before Locke, RAJ. Matter is deferred until 3/27/12. Case continued until 3/27/2012 by agreement for hearing on motion for joinder. Motion to be filed by 3/15/12 and opposition by 3/22/12. (Jail List) Locke, RAJ - M. Lee, ADA - N. King, Court Reporter - K. Wenge, Attorney
03/16/2012	37.0	Commonwealth files: Motion for Joinder of Defendants
03/22/2012	38.0	Defendant's Opposition to Commonwealth's Motion for Joinder filed
03/27/2012		Defendant brought into court - hearing on Commonwealth's motion for joinder (P#37) held before Locke, RAJ. After hearing, motion taken under advisement. Case continued until 4/10/2012 by agreement for hearing re: trial date. Locke, RAJ - M. Lee, ADA - D. McGowan, ADA - N. King, Court Reporter - K. Wenge, Attorney
04/10/2012		Defendant not present, status conference held before Locke, RAJ. By agreement, trial date is continued until 10/17/2012 (cancel 5/7/12). The Court orders time excluded under Rule 36. Case continued to 5/10/2012 by agreement for status re: findings of motion for joinder. Locke, RAJ - M. Lee, ADA - D. McGowan, ADA - N. King, Court Reporter - K. Wenge, Attorney
04/27/2012	38.1	Commonwealth files: Eleventh Notice of Discovery filed.

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Date	Paper	Text
05/10/2012		Defendant not present. Status conference held before Locke, RAJ. Case continued until 6/14/2012 by agreement for discovery compliance. Locke, RAJ - M. Lee, ADA - N. King, Court Reporter - K. Wenge, Attorney
05/10/2012	39.0	Memorandum of Decision and Order on Commonwealth's Motion for Joinder of Defendants, filed by the Court, Locke, RAJ, allowing Commonwealth's motion. (Parties notified w/copy)
05/14/2012	40.0	Commonwealth files Thirteenth Notice of Discovery
06/14/2012		Defendant not present, status conference held before Locke, RAJ. Case continued until 7/12/2012 by agreement for discovery compliance. Locke, RAJ - M. Lee, ADA - D. McGowan, ADA - N. King, Court Reporter - K. Wenge-O'Brien, Attorney
06/18/2012	41.0	Commonwealth files Notice of Discovery XII
07/12/2012		Defendant not present, continued by agreement until 10/2/2012 for FPTC. Connors, J. - M. Lee and D. McGowan, ADA'S - R. Leroux, Court Reporter.
07/18/2012	42.0	Commonwealth files: Fourteenth Notice of Discovery
07/26/2012	43.0	Commonwealth files: Fifteenth Notice of Discovery
07/26/2012	44.0	Commonwealth files: Sixteenth Notice of Discovery
08/17/2012		Defendant not present, hearing on discovery held before Connors, J. After hearing, the Court orders discovery released to counsel under protective order. The Court further orders defendant to be held outside Suffolk County. (Order issued; Asst. Dep. Sup. J. Casey notified) Case continued until 8/27/2012 by agreement at 3:00 PM or hearing on protective order. Connors, J - M. Lee, ADA - D. McGowan, ADA - R. LeRoux, Court Reporter - K. O'Brien, Attorney
08/27/2012		Defendant not present. Presence waived.
08/27/2012	45.0	Commonwealth files Motion for a Protective Order
08/27/2012		Hearing on P#45 held before Connors, J.
08/27/2012		MOTION (P#45) allowed as endorsed. Connors, J. (Copy given in hand to Attorney and mailed to ADA)
08/27/2012		Case has next date in Courtroom 806. Connors, J - M. Lee, ADA - D. McGowan, ADA - R. LeRoux, Court Reporter - K. O'Brien, Attorney
08/28/2012	46.0	Commonwealth files: Seventeenth Notice of Discovery
09/01/2012		The Court, Hogan, J. denies Paper #27 as endorsed. (Notice and copy of endorsement sent to parties).
09/17/2012	47.0	Commonwealth files eighteenth notice of discovery
09/25/2012	48.0	Commonwealth files nineteenth notice of discovery
09/25/2012	48.5	Commonwealth files motion for copy of impounded unredacted endorsed order to disclose
09/25/2012		MOTION (P#48.5) allowed. Connors, J.
09/26/2012	49.0	Commonwealth files eighteenth notice of discovery
09/28/2012	50.0	Def't files motion for production of discovery information
10/02/2012		Continued to 10/10/2012 for hearing on FPTH at 3:30pm. Jail list and Habe (Linda Giles, Justice) M. Lee, ADA; K. O'Brien, Atty; N. McCann, Court reporter

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Date	Paper	Text
10/02/2012		MOTION (P#50) allowed by agreement(Linda Giles,Justice).
10/09/2012	51.0	Deft files motion for individual voir dire of potential jurors
10/09/2012	52.0	Deft files motion in limine in re: Courtroom identification testimony
10/10/2012		Defendant brought into court. Status hearing held. Giles, J. D. McGowan and M. Lee ADA's, K. Wenge Attorney, N. McCann CR. Jail at Cambridge (Middlesex county)
10/10/2012		Commonwealth files Motion in Limine Regarding Photographs of Victim (filed as p #77 in Co-D's 2011-10438):
10/10/2012		Commonwealth files Motion for view ( listed as p#78 in Co-D's #2011-10438)
10/10/2012		Commonwealth files Motion in Limine regarding Demonstrative charts and Diagrams. (filed as p#79 in Co-d's #2011-10468)
10/10/2012		Commonwealth files Notice Regarding Testimony of Expert Witnesses (listed as p# 80 in Co-D's #2011/10438)
10/10/2012		Commonwealth files Motion for Reciprical Discovery (listed as p 3 80 in Co-D's # 2011-10438)
10/10/2012		Commonwealth files Request for Jury Instruction (filed as p#82 in Co-D's 2011-10438)
10/10/2012		Commonwealth files Proposed Statement of the Case and Proposed Questions for Individual Voir Dire for Purposes of Jury Impanelment ( listed as # 83 in Co-D's 2011-10438)
10/10/2012		Commonwealth files Commonwealth's Pre-Trial Memorandum (listed as p3 83.1 in Co-D's 2011-10438)
10/15/2012	53.0	Deft files Witness List.
10/15/2012	54.0	Deft files Motion in Limine to PreClude Introduction of drug evidence.
10/15/2012	55.0	Deft files Motion for Jury Instructions Prior to Trial
10/16/2012		Defendant not present for Hearing re: Motions After hearing. Commonwealth's Motions for view, demonstrative charts and reciprical discovery allowed. (See pp#'s 78, 79 and 81 in 2011-10438).
10/16/2012	56.0	Commonwealth files Motion for Disclosure regarding witness protected documentaton for Cordell McAfee.
10/16/2012		Defendant not present for Case continued by agreement to 10/17/2012 for Impanelment in CrtRm 806. Jail at Cambridge. . Giles, J. ADA M. Lee, Atty. K O'Brien Ct. ReP N. McCann.
10/17/2012		Defendant brought into court for on this date.
10/17/2012	57.0	Deft files Motion re: Court Attire
10/17/2012		MOTION (P#57) allowed (Linda E Giles, Justice).
10/17/2012	58.0	Deft files Witness List
10/17/2012	59.0	Deft files Revised Motion for Individual Voir Dire
10/17/2012	60.0	Deft files Proposed Stipulation in Re: Drug Evidence
10/17/2012	61.0	Commonwealth files Nolle Prosequi as to offenses # 007 and 008.
10/17/2012		Commonwealth files (Revised) proposed Statement of the Case and Proposed Question for Individual Voir Dire for Puposos of Jury Impanelment (listed as # 88 in # 2011-10438)
10/17/2012		Hearing re: Motions See Generally Record. Defendant A. Simpkins joining in co-Defendant's motions.

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Date	Paper	Text
10/17/2012		RE: Commonwealth's Proposed Statement (p#83 in Co-D's #2011-10438) endorsed "withdrawn" by the Court. Giles, J.
10/17/2012		Re: Commonwealth's Revised Proposed Statement (p #83.1 in Co -D's #2011-10438) endorsed Allowed in part. Giles, J.
10/17/2012		Re: Defendant' Motion P#51 endorsed Withdrawn
10/17/2012		MOTION (P#57) allowed (Linda E Giles, Justice).
10/17/2012		MOTION (P#59) allowed in part (Linda E Giles, Justice).
10/17/2012		Hearing held reL pre-trial conflict of interest of Defendant' Atty (spouse is currently a Suffolk County ADA) Collôquy held by the Court with Defendant. After hearing, Court finds Defendant's wiaver of any potential conflict of interest made willing, knowingly, and voluntarily. See Record. Giles, J. Ct Rep: N. McCann
10/17/2012		Commonwealth Moves for trial as to #009, #010, and #001-#004/ Court Orders panel of Sixteen (16) jurors selected. Five (5) jurors so selected this date. Thirty-eight (38) remaining jurors ordere to return on THursday 10/18/2012 at 9 am to resume impanelment. Giles, J. ADA Lee, D. McGowan, K O"Brien, Ct. Rep: N. McCann
10/17/2012		RE Offense 7:Nolle prosequi
10/17/2012		RE Offense 8:Nolle prosequi
10/18/2012		Defendant brought into court . Impanelment continues with thirty-eight (38) venari returning from 10/17/2012. An additional four (4) jurors so selected. Further Impanelment resumes with new venari of eighty-fie (85) jurors. No juroso selected with additional venari seen this date. Firty-one (51) remaining jurors ordered to retun on 10/19/2012 at 9 am to resume impanelment. Giles J. Ct. Rep: n McMann
10/19/2012		Defendant brought into court . Impanlement continues with fifty (50) venari returning from 10/18/2012. Anadditonal six (6) jurors so selected. Venari exhausted.
10/19/2012		Court elects to proceed for trial with fiteen (15) jurors selected to date. Further hearing held re: additional motions. See generally Record.
10/19/2012		Further hearing held re: additional motions See Generally, Record. RE: Commonwealth's Motions (p#77 in Co-D's #2011-10438) ALLOWED. RE: Comm's request (p#82 in Co-D's # 2011-10438 )Allowed. Giles, J. Ct. Rep: N. McCann
10/19/2012		MOTION (P#52) allowed without objection. (Linda E Giles, Justice).
10/19/2012		Case con't by agreement to 10/22/2012 for Commencement of Commonwealth's Case-in-chief. (Room 806)
10/19/2012		Defendant brought into court . Hearing re: Co-D's L. Perkins' Motion and Issuea. See Generally. Record. Hearin re: other trial issuses. See Generally, Record.
10/22/2012		Panel of fifteen (15) sworn. Indictments read as to #009 and #010 and #001- 004. Pre-Charge given. Opening Statements given. Commonwealth commences case -in- chief.
10/22/2012		Voir Dire hearing held re: Det. J. Callahn. BPD. See Generally: Record. Giles, J.; Ct. Rep: N. McCann

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Date	Paper	Text
10/23/2012		Defendant brought into court for on this date. Trial resumes before Giles, J. and fifteen (15) jurors. View taken.
10/24/2012		Defendant brought into court for on this date. Trial resumes before Giles, J. and fifteen (15) jurors.
10/24/2012	62.0	Commonwealth files Twentieth Notice of Discovery
10/24/2012	63.0	Commonwealth files Twenty-First Notice of Discovery
10/24/2012	64.0	Commonwealth files Twenty-Second Notice of Discovery
10/24/2012	65.0	Commonwealth files Twenty-Third Notice of Discovery
10/25/2012		Defendant brought into court for on this date.
10/25/2012		Regarding jury trial: Trial resumes before fifteen (15) jurors and Giles, J. Ct. Rep: N. McCann
10/26/2012		Defendant brought into court for on this date.
10/26/2012		Regarding jury trial: Trial continues before fifteen (15) jurors and Giles, J. Ct. Rep: N. McCann
10/29/2012		Defendant not present. Trial cancelled this date due to inclement weather.
10/29/2012		Trial to resume on 10/31/2012 at 9:00 a.m. per Order of Court (ctrm 806). - Linda E Giles, Justice
10/31/2012		Defendant brought into court.
10/31/2012		Commonwealth files Motion in Limine to Prohibit Cross-Examination Regarding Any Subsequent Bad Act (filed as P#104 in co-deft #2011-10438)
10/31/2012		Hearing re: Commonwealth's MOTION (P#104 in #2011-10438). After hearing, the Court allows the motion in part and denies the motion in part pursuant to ground rules stated on the record.
10/31/2012		Commonwealth files Motion in Limine to Prohibit Cross-Examination Regarding Collateral Matters and Alleged Prior Bad Acts (filed as P#105 in co-deft #2011-10438)
10/31/2012		Hearing re: Commonwealth's MOTION (P#105 in #2011-10438). After hearing, the Court denies the motion.
10/31/2012		Atty M. Roitman appointed for witness Isaac Gaskins re: 5th Amendment privilege issues. Atty P. Davenport appointed for witness re: 5th Amendment privilege issues.
10/31/2012	66.0	Commonwealth files Notice of Discovery II
10/31/2012		Trial resumes before Giles, J. and panel of fifteen (15) jurors. - Giles, J. - N. McCann, CR
11/01/2012		Defendant brought into court.
11/01/2012		Hearing re: juror #70 A. Barone in seat #12. After hearing, said juror excused from further jury service.
11/01/2012		Trial resumes before Giles, J. and panel of fourteen (14) jurors.
11/01/2012		Colloquy held by the Court with witness Quantasha Golden. After hearing, Court finds witness competent to testify. Court further finds witness asserts valid Fifth Amendment privilege. Witness recognized and released on her own recognizance, to return on Friday, 11/2/2012 at 9 a.m. Atty P. Davenport present, for witness. - Giles, J. - N. McCann, CR

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Date	Paper	Text
11/02/2012		Defendant brought into court.
11/02/2012		Trial resumes before Giles, J. and panel of fourteen (14) jurors.
11/02/2012		Hearing held re: immunity issue for witness Q. Golden. After hearing, ORDER of Immunity to Quantasha Golden filed and endorsed thereon by the Court. (Order filed as P#108 in co-deft #2011-10438) - Giles, J. - N. McCann, CR
11/05/2012		Defendant brought into court.
11/05/2012		Trial resumes before Giles, J. and panel of fourteen (14) jurors. - Giles, J. - N. McCann, CR
11/06/2012		Defendant brought into court - N. McCann CR
11/06/2012		Trial continues
11/06/2012		Commonwealth rests.
11/06/2012	67.0	Deft files motion for required finding of not guilty
11/06/2012		After hearing , Paper (#67) is DENIED (see record).
11/06/2012		Defense rests.
11/06/2012		Deft orally renews motion for required finding of not guilty. Motion is Denied.
11/07/2012		Defendant brought into court - N. McCann CR.
11/07/2012		Trial continues
11/07/2012		At the final submission of the case to the jury, The Court appoints Juror (#38) (seat #4) - foreperson. The names of Juror ( #63 ) (seat #10 ) and Juror (#117 ) (seat #15 ) were each drawn and designated alternate jurors. After inspection, attorneys are satisfied with exhibits and verdict slips. Jury Deliberations begin.
11/08/2012		Defendant brought into court - N. McCann CR.
11/08/2012		Trial continues
11/09/2012		Defendant brought into court.
11/09/2012		Panel of fourteen (14) jurors present and reconvened at 9:23 a.m. Court orders jury to resume deliberations. Court allows jurors to separate at 4:00 p.m. and orders jury to return on Tuesday, November 13, 2012 at 9:00 a.m. to resume deliberations. - Giles, J. - N. McCann, CR
11/13/2012		Defendant brought into court - C. Sproul CR.
11/13/2012		Jury deliberations continue
11/14/2012		Defendant brought into court - C. Sproul CR.
11/14/2012		Jury Deliberations continue.
11/14/2012		Some verdicts returned and placed under seal per Order of Court.
11/15/2012		Defendant brought into court.
11/15/2012		Panel of fourteen (14) jurors present and reconvened at 9:22 a.m. and ordered to resume deliberations. Jury note at 10:10 a.m. (reporting that they remain deadlocked on some offense(s)), marked "EEE" for Identification.
11/15/2012		RE Offense 1:Guilty verdict
11/15/2012	68.0	as to #001 - Verdict affirmed, verdict slip filed
11/15/2012		RE Offense 2:Guilty verdict
11/15/2012	69.0	as to #002 - Verdict affirmed, verdict slip filed

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Date	Paper	Text
11/15/2012		RE Offense 3:Guilty verdict
11/15/2012	70.0	as to #003 - Verdict affirmed, verdict slip filed
11/15/2012		RE Offense 4:Not guilty verdict
11/15/2012	71.0	as to #004 - Verdict affirmed, verdict slip filed
11/15/2012		After further hearing, Court orders that Deft remain held without bail pending sentencing.
11/15/2012		Case continued by agreement to 11/20/2012 at 9 a.m. for sentencing (as to #001-#003) and for trial assignment (as to #005 and #006). (ctrm 806) Jail list at Cambridge. - Giles, J. - N. McCann, CR
11/27/2012	72.0	Notice of Appearance of Deft's Atty, Robert Sheketoff, filed.
11/27/2012		Defendant brought into court for sentencing.
11/27/2012		After hearing, The Court denies the Defendant's Motion to Dismiss The Case is transferred to the Sixth Criminal Session (Courtroom 906) for retrial of Offenses # 009 and # 010, as well as addressing the open offenses # 005 and # 006. The court further orders any bail issues should be addressed in the sixth criminal session. Giles, J. - J. Lee, ADA - D. McGowan, ADA - K. O'Brien, Atty and R. Sheketoff, Atty, - C. Sproul, Court Reporter.
11/27/2012	73.0	Defendant files: Motion to Dismiss
11/28/2012	74.0	NOTICE of APPEAL FILED by Adam Simpkins
12/13/2012		Defendant brought into court
12/13/2012	75.0	Deft files Motion for Trial Transcripts
12/13/2012		Hearing on bail held before Locke, RAJ and taken under advisement.
12/13/2012		Continued to 1/8/2013 by agreement for status. Locke, RAJ - M. Lee, ADA - D. McGowan, ADA - N. King, Court Reporter - K. O'Brien, Attorney
12/15/2012	75.1	Defendant's Request for Free Transcript filed and allowed except as to impanelment. Locke, RAJ. (copy mailed to atty).
01/24/2013		Defendant not present.
01/24/2013	76.0	Deft files Request for Transcript.
01/24/2013		MOTION (P#76) allowed as endorsed. Giles, J. - M. Lee and D. McGowan, ADA - K. O'Brien, Attorney - D. Cercone, Court Reporter.
03/01/2013		The Court, Locke, RAJ. denies defendant's motion for reduction of bail. (Partie notified).
03/20/2013		Court Reporter Javs SUF CR 9 is hereby notified to prepare one copy of the transcript of the evidence of 12/16/2011
03/20/2013		Court Reporter Greenlaw, Warren is hereby notified to prepare one copy of the transcript of the evidence of 01/23/2012 . Hearing re: Motion to Suppress before Sanders, J
03/20/2013		Court Reporter McCann, Nancy is hereby notified to prepare one copy of the transcript of the evidence of 10/17/18/19/22/23/24/25/26/31/2012 and 11/1/2/5/6/7/8/9/15/2012. Motions, Impanelment,Trial, Verdict and Sentencing
03/20/2013		Court Reporter Pollier, Allison is hereby notified to prepare one copy of the transcript of the evidence of 10/19/2012 . Trial before Giles, J
03/20/2013		Court Reporter Sproul, Carolyn (per diem) is hereby notified to

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Date	Paper	Text
		prepare one copy of the transcript of the evidence of 11/13/14/2012. Trial before Giles, J
04/02/2013		Correspondence from Judge Giles regarding letter received from purported girlfriend of defendant placed in file along with letter received from Alexandria Mosley.
04/09/2013		Transcript of testimony received from Transcript of proceedings from Court Reporter Javs SUF CR 9
04/25/2013		Defendant not in Court. Case continued to 5/30/13 by agreement at 2:00 pm for a status hearing (Rule 36 WAIVED) Kottmyer, J., M. Lee, ADA., K. O'Brien, Atty., W. Greenlaw, Court Reporter
05/30/2013		Defendant not in Court. Case continued by agreement to 7/18/13 at 2:00 pm for a status hearing Re: Appeal. Kottmyer, J., M. Lee, ADA., K. O'Brien, Atty., W. Greenlaw, Court Reporter
07/16/2013		Transcript of testimony received volumes October 22 Thru November 15,2012 from Transcript of proceedings from Court Reporter McCann, Nancy
07/18/2013		Defendant not present, Status Conference held re: Appeal. continued by agreement until 9/5/2013 for status re: Appeal. Jail list. Habe to Middlesex Jail. * Keep separate from Lavonence Perkins . Connors, J - M. Lee, ADA - K. LeRoux, CR - K. O'Brian, Attorney
08/15/2013		Transcript of testimony received volumes # 1 and 2 from Transcript of proceedings from Court Reporter McCann, Nancy
09/05/2013		Defendant brought into court. Status conference held before Connors, J.
09/05/2013		Continued to 9/26/2013 by agreement for hearing re: status, re: Co-Def't's appeal in (CtRm.906 at 2:00PM) * Keep separate from Lavonrence Perkins.* (JAIL LIST) (Thomas A. Connors, Justice) - M. Lee. ADA - K. O'Brien, Attorney - F. LeRoux, Court Reporter
09/26/2013		Defendant not present. Presence waived, Attorney O'Brien unavailable this day. Status conference held before Connors. J.
09/26/2013		The court orders Attorney O'Brien to file an affidavit re: status of appeal (Atty notified).
09/26/2013		Continued to 10/3/2013 by agreement for status, re: appeal in (CtRm.906 at 2:00PM) * Keep separate from Lavonrence Perkins.* (JAIL LIST) (Thomas A. Connors, Justice) - M. Lee. ADA - J. Sultan for K. O'Brien, Attorney - R. LeRoux, Court Reporter
10/03/2013		Defendant not present in court. Event not held. Attorney O' Brien unavailable this day. Defense counsel's Affidavit in Re: C.211, Section. 3 rd. Petition Status received by fax . Continued to 10/10/13 @ 2:00pm at the request of the defendant for Status Re: Appeal. Atty O'Brien notified. Connors, J. - M. Lee, ADA - ERD
10/10/2013		Defendant not present
10/10/2013		Continued to 11/5/2013 for hearing on status at 2:00pm (Jeffrey A. Locke, Justice) M.Lee,ADA; K.O'Brien,Atty; N.King,court reporter
10/11/2013		Transcript of testimony received volumes from Transcript of proceedings from Court Reporter Pollier, Allison

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Date	Paper	Text
11/05/2013		Defendant brought into court. Status Conference Held . Continued to 01/09/2014 at 2:00pm court room 906 to file motion. Continued to 02/19/2014 by agreement for trial (Session TBD). Locke, J. - M. Lee, ADA - ERD - K. Obrien, Attorney.
12/13/2013	77.0	Reservation and Report filed by the Court, Gants, J. of the SJC.
12/16/2013	78.0	Notice of Docket entry received from Supreme Judicial Court. You are hereby notified that on December 12, 2013 the following was entered onto the docket: AMENDED Reservation and Report: "...I reserve and report this petition for determination to the full court..." (Gants, J.)
01/09/2014		Defendant brought into court. Status conference held before Kottmyer, J. Appeal remains outstanding.
01/09/2014		Continued to 4/1/2014 by agreement for status re: appeal at 2:00pm. Kottmyer, J. - M. Lee, ADA - K. O'Brien, Attorney - N.King, Court Reporter

**EVENTS**

Date	Session	Event	Result
02/18/2011	Magistrate Ctrm 705	Arraignment	Event not held--joint request
02/22/2011	Magistrate Ctrm 705	Arraignment	Event held as scheduled
03/25/2011	Magistrate Ctrm 705	Jail List. Conference: Pre-Trial	Event not held--joint request
04/06/2011	Criminal 1 Ctrm 704	Continued by agreement. Also re: Setting of Tracking Order. (Jail List).	
04/06/2011	Criminal 1 Ctrm 704	Bail: Review by video Conference	Event held as scheduled
05/12/2011	Magistrate Ctrm 705	Continuance by agreement (Jail List) Conference: Pre-Trial	Event held as scheduled
05/24/2011	Magistrate Ctrm 705	Needs to be arraigned on offenses 009 and 010. Hearing: Appointment Counsel	Event held as scheduled
06/02/2011	Criminal 6 Ctrm 906	Conference: Pre-Trial	Event canceled not re-scheduled
06/02/2011	Criminal 4 Ctrm 815	Hearing: Motion	Event held as scheduled
06/28/2011	Magistrate Ctrm 705	re: protective order Conference: Pre-Trial	Event canceled not re-scheduled
07/14/2011	Criminal 6 Ctrm 906	Also re: Set the Balance of Track. Conference: Pre-Trial	Event held as scheduled
07/27/2011	Criminal 6 Ctrm 906	By agreement. Parties notified. Hearing: Motion	Event held as scheduled
09/16/2011	Criminal 6 Ctrm 906	Jail List Hearing: Discovery Motions	Event held as scheduled
10/11/2011	Criminal 9 Ctrm 713	Continuance by agreement. Jail list. Hearing: Motion to Dismiss	Event not held--req of Commonwealth
11/15/2011	Criminal 9 Ctrm 713	Continuance by agreement Hearing: Evidentiary-dismiss	Event not held--joint request
11/15/2011	Criminal 9 Ctrm 713	Hearing: Evidentiary-dismiss	Event not held--joint request
11/15/2011	Criminal 6 Ctrm 906	Jail list Hearing: Pre-Trial	Event not held--joint request
11/16/2011	Criminal 5 Ctrm 817	Conference: Final Pre-Trial	Event moved to another session
11/16/2011	Criminal 2 Ctrm 806	Conference: Final Pre-Trial	Event canceled not re-scheduled
12/06/2011	Criminal 5 Ctrm 817	Parties notified of session assignment. TRIAL: by jury	Event moved to another session

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Date	Session	Event	Result
12/06/2011	Criminal 2 Ctrm 806	TRIAL: by jury	Event canceled not re-scheduled
12/16/2011	Criminal 9 Ctrm 713	Hearing: Evidentiary-dismiss	Event held--(ACTIVE) under advisement
12/19/2011	Criminal 9 Ctrm 713	Hearing: Evidentiary-suppression Jail list.	Event rescheduled by court prior to date
12/20/2011	Criminal 9 Ctrm 713	Hearing: Evidentiary-suppression Jail list.	Event rescheduled by court prior to date
01/23/2012	Criminal 9 Ctrm 713	Hearing: Evidentiary-suppression Two day hearing. 5 defendant case. Jail list. Continued by Order of Court. Notice sent.	Event held as scheduled
01/24/2012	Criminal 9 Ctrm 713	Hearing: Evidentiary-suppression	Event canceled not re-scheduled
02/14/2012	Criminal 1 Ctrm 704	Bail: Review by video Conference Cont by agreement Jail list	Event not held--req of Defendant
03/08/2012	Criminal 6 Ctrm 906	Hearing: Motion to Continue Jail list.	Event held as scheduled
03/27/2012	Criminal 6 Ctrm 906	Hearing: Motion Continuance by agreement re: joinder motion (Jail List)	Event held--(ACTIVE) under advisement
04/03/2012	Criminal 6 Ctrm 906	Conference: Final Pre-Trial	Event not held--joint request
04/10/2012	Criminal 6 Ctrm 906	Conference: Trial Assignment Continuance by agreement re: trial date.	Event held as scheduled
05/07/2012	Criminal 6 Ctrm 906	TRIAL: by jury	Event rescheduled by court prior to date
05/10/2012	Criminal 6 Ctrm 906	Conference: Status Review Continuance by agreement re: findings of motion for joinder.	Event moved to another session
05/10/2012	Criminal 6 Ctrm 906	Conference: Status Review Continuance by agreement re: findings of motion for joinder.	Event held as scheduled
06/14/2012	Criminal 6 Ctrm 906	Conference: Status Review Continuance by agreement re: discovery	Event held as scheduled
07/12/2012	Criminal 6 Ctrm 906	Hearing: Compliance Continuance by agreement	Event held as scheduled
08/16/2012	Criminal 6 Ctrm 906	Conference: Status Review Jail list.	Event held as scheduled
08/17/2012	Criminal 6 Ctrm 906	Hearing: Discovery Motions	Event held as scheduled
08/27/2012	Criminal 6 Ctrm 906	Hearing: Motion Continuance by agreement re: protective order	Event held as scheduled
10/02/2012	Criminal 6 Ctrm 906	Conference: Final Pre-Trial	Event moved to another session
10/02/2012	Criminal 2 Ctrm 806	Conference: Final Pre-Trial Parties notified of session assignment. ***Check custody status with Attorney O'Brien***	Event held as scheduled
10/10/2012	Criminal 2 Ctrm 806	Conference: Final Pre-Trial @ 3:30pm. Jail list and Habe	Event held as scheduled
10/16/2012	Criminal 2 Ctrm 806	Hearing: Motion jail at Cambridge (Middlesex County)	Event held as scheduled
10/17/2012	Criminal 6 Ctrm 906	TRIAL: by jury Continuance by agreement	Event moved to another session
10/17/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Trial begins
10/18/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event continues over multiple days
10/19/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event continues over multiple days
10/22/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event continues over multiple days
10/23/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event continues over multiple days
10/24/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event continues over multiple days
10/25/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event continues over multiple days
10/26/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event continues over multiple days

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Date	Session	Event	Result
10/29/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event rescheduled by court order
10/30/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event rescheduled by court order
10/31/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event continues over multiple days
11/01/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event continues over multiple days
11/02/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event continues over multiple days
11/05/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event continues over multiple days
11/06/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event continues over multiple days
11/07/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event continues over multiple days
11/08/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event continues over multiple days
11/09/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event continues over multiple days
11/13/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event continues over multiple days
11/14/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Event continues over multiple days
11/15/2012	Criminal 2 Ctrm 806	TRIAL: by jury	Trial ends
11/27/2012	Criminal 2 Ctrm 806	Hearing: Sentence Imposition	Event not held--req of Commonwealth by agreement. sentencing re: #001-#003. also, trial assignment re: #005 and 006; dismissal re: #009 and 010. JAIL LIST.
12/11/2012	Criminal 6 Ctrm 906	Hearing: Bail	Event not held--req of Defendant
12/13/2012	Criminal 6 Ctrm 906	Jail list and habe faxed to Middlesex jail. Hearing: Bail	Event held--(ACTIVE) under advisement
01/08/2013	Criminal 6 Ctrm 906	Jail list and habe faxed to Middlesex jail. ***Keep separate from Lavonrence Perkins Conference: Status Review	Event not held--joint request
01/24/2013	Criminal 6 Ctrm 906	Continuance by agreement. (Co-D attorney unavailable). Conference: Status Review	Event held as scheduled
04/25/2013	Criminal 6 Ctrm 906	By agreement. Conference: Status Review	Event held as scheduled
05/30/2013	Criminal 6 Ctrm 906	Status re: Appeal. Conference: Status Review	Event moved to another session
05/30/2013	Criminal 8 Ctrm 914	Re: Appeal Conference: Status Review	Event held as scheduled
07/18/2013	Criminal 6 Ctrm 906	Status re: appeal. Conference: Status Review	Event held as scheduled
09/05/2013	Criminal 6 Ctrm 906	Re: Appeal Conference: Status Review	Event moved to another session
09/05/2013	Criminal 6 Ctrm 906	continuation by agreement re: Status re: Appeal. Jail list and Habe to Middlesex Jail. * Keep separate from Lavonrence Perkins. (habe faxed) Conference: Status Review	Event held as scheduled
09/26/2013	Criminal 6 Ctrm 906	continuation by agreement re: Status re: Appeal. Jail list and Habe to Middlesex Jail. * Keep separate from Lavonrence Perkins. (habe faxed) Conference: Status Review	Event held as scheduled
10/03/2013	Criminal 6 Ctrm 906	Continue by agreement Status, Re: Appeal Presence waived by Attorney Wenge. Habe cancelled. Conference: Status Review	Event held as scheduled
10/10/2013	Criminal 6 Ctrm 906	Continue by agreement Re: Status of Appeal (Atty notified) *Keep Separate from Lavonrence Perkins* (JAIL LIST) Habe issued, faxed copy enclosed Conference: Status Review	Event held as scheduled
11/05/2013	Criminal 6 Ctrm 906	Continued at the request of the defendant. Re: Status of Appeal. Atty O'Brien notified. Presence waived by Attorney O'Brien. Status: Review by Session	Event held as scheduled
01/07/2014	Criminal 6 Ctrm 906	Conference: Status Review	Event not held--req of Defendant
		Status re: appeal. - Not held. Attorney O'Brien unavailable.	

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Commonwealth v Simpkins, Adam

Date	Session	Event	Result
01/09/2014	Criminal 6 Ctrm 906	Conference: Status Review Status re: appeal. Presence waived.	Event held as scheduled
01/09/2014	Criminal 7 Ctrm 907	Hearing: Misc Matters Parties notified of session assignment.	Event not held--joint request
02/19/2014	Criminal 6 Ctrm 906	TRIAL: by jury Continued by agreement. ( Session TBD)	Event moved to another session
02/19/2014	Criminal 7 Ctrm 907	TRIAL: by jury Appeal before the SJC.	Event not held--joint request
04/01/2014	Criminal 6 Ctrm 906	Conference: Status Review Continuance by agreement Re: Appeal (Parties notified) copies enclosed	

*Commonwealth of Massachusetts*

SUFFOLK, SS.

At the SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT FOR CRIMINAL BUSINESS,  
begun and holden at the CITY OF BOSTON, within and for the County of Suffolk, on the first Monday of May in the year of our

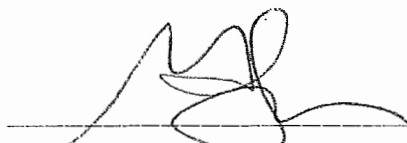
Lord two thousand and eleven.

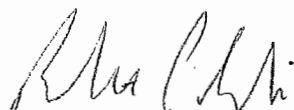
THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present that

**ADAM SIMPKINS,**

on May 7, 2010, did assault and beat Cordell McAfee with intent to murder him and by such assault and beating did kill  
and murder Cordell McAfee.

A TRUE BILL

  
Assistant District Attorney


  
Foreman of the Grand Jury

*Superior Court Department - Criminal Business*

*May, Sitting, 2011*

**MAY 06 2011**

*Returned into said Superior Court by the Grand Jurors and ordered to be filed.*

  
Clerk of Court

INDICTMENT  
2011-10142 - #010

*Commonwealth of Massachusetts*

SUFFOLK, SS.

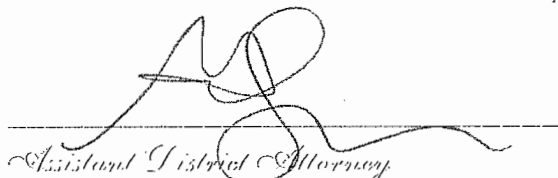
At the SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT FOR CRIMINAL BUSINESS,  
begun and holden at the CITY OF BOSTON, within and for the County of Suffolk, on the first Monday of May in the year of our  
Lord two thousand and eleven.

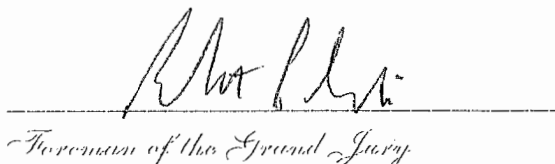
THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present that

**ADAM SIMPKINS,**

on May 7, 2010, being armed with a certain dangerous weapon, to wit: a firearm, did assault one Christopher Jones with  
intent to murder him.

A TRUE BILL

  
*Assistant District Attorney*

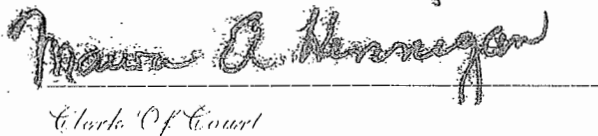
  
*Foreman of the Grand Jury*

*Superior Court Department - Criminal Business*

*May, Sitting, 2011*

**MAY 06 2011**

*Returned into said Superior Court by the Grand Jurors and ordered to be filed.*

  
*Maria A. Hennigan*  
*Clerk Of Court*

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
SUCR 2011-10142

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COMMONWEALTH

V.

ADAM SIMPKINS

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**MOTION FOR REQUIRED FINDINGS OF NOT GUILTY**

Now comes the defendant Adam Simpkins and respectfully moves this Honorable Court to find him not guilty of the offenses charged. In support of his motion, the defendant states that the evidence submitted by the Commonwealth, considered in the light most favorable to the Commonwealth, is insufficient to support guilty verdicts as a matter of law. Commonwealth v. Latimore, 378 Mass. 671, 676-677 (1979). Thus submitting this case to the jury would violate his state and federal rights to due process.

**Murder**

The defendant is charged with the first-degree murder of Cordell McAfee. The Commonwealth alleges that Mr. Simpkins did not actually shoot Mr. McAfee, but rather participated in the murder as an aider and abetter. See Commonwealth v. Zanetti, 454 Mass. 449, 467-468 (2009). As to this offense, the Commonwealth must prove beyond a reasonable doubt that one or more individuals (1) committed an unlawful killing, (2) with malice, and (3) with deliberate premeditation. The Commonwealth must further prove beyond a reasonable doubt that Mr. Simpkins (1) knowingly participated in the commission of McAfee's murder (2) with the intent required for that offense.

After hearing, and for reasons stated on the records of the court DENIES the motion. (S. Legat), 11/6/12

11-9-11  
FILE

Even considered in the light most favorable to the Commonwealth, there is not a single iota of evidence that Mr. Simpkins was involved in McAfee's murder prior to or during its commission. There is no evidence that Simpkins had any problems with McAfee, or that he associated with anyone who did. In fact, there is no evidence that Simpkins even *knew* McAfee. While the Commonwealth clings to the "incident" at the Dunkin' Donuts parking lot, as related by Christopher Jones, as some indicia of motive, that assertion is baseless. Jones testified that one of the "dudes" asked him "what's up?" as if there was a problem, but then agreed with counsel that there *was* no problem. Jones testified that the entire interaction lasted just seconds, and there was no evidence that Simpkins had any direct interaction with Jones or with McAfee.

Perhaps most contrary to the Commonwealth's theory, however, is Jones's testimony that the "what's up?" was directed at him, *not* at McAfee, who was not even present for the exchange. Even if the Court were to find that the Dunkin' Donuts "incident" bore some connection to the shooting, it was *Jones* who exchanged words with the "dudes," not McAfee. Yet Jones himself was aware that McAfee was the shooters' target: witness Anthony O'Connor testified that just minutes after the shooting, Jones told him, "they were shooting at my brother." In fact, McAfee was hit twice during the shooting, while Jones, seated right next to him on the step when the shooting began, was not injured at all. For all of these reasons, the defendant suggests that testimony regarding the Dunkin' Donuts meeting is of no value at all to the fact finder.

The fact that evidence arguably connected to the shooting was recovered from Simpkins's apartment is insufficient to establish his guilt as an aider and abetter to the murder. There is no evidence that the firearms belonged to Simpkins. There is no evidence that the firearms were taken from his apartment prior to the shooting. There is no evidence that Simpkins procured the firearms, or that he provided them to the shooters. Similarly, there is no evidence that either of the hoodies belonged to Simpkins, or that he provided them to the shooters, or that the hoodies came from his apartment prior to the shooting. The Commonwealth does not contend that Simpkins was one of the two shooters wearing the hoodie during the murder. At most, then, the evidence established that Simpkins, as well as at least one other individual, had worn one of the hoodies at some point prior to its collection by police.

There is no evidence that Simpkins was part of any plan to kill McAfee, or that he knew of any plan to kill McAfee, or that such a plan even existed. In fact, there is no evidence that the two shooters even came from Simpkins's apartment: Quantasha Golden testified that although she lives directly across the street from Simpkins's house and observed the shooters walk up and down her street prior to the shooting, she did not see them, or anyone, exit Simpkins's house prior to the shooting.

#### **Armed Assault with Intent to Murder**

The defendant is further charged with the Armed Assault with Intent to Murder of Christopher Jones. Again, the Commonwealth does not allege that Mr. Simpkins himself assaulted Mr. Jones. As with the murder charge, the Commonwealth alleges that Mr. Simpkins participated in the offense as an aider and abetter. As to this offense, the Commonwealth must prove beyond a reasonable doubt that (1) one or more individuals assaulted Mr. Jones, (2) that the individuals were armed at the time of the assault, (3) and that the individuals did so with the specific intent to cause the death of Mr. Jones. The Commonwealth must further prove beyond a reasonable doubt that Mr. Simpkins (1) knowingly participated in the commission of the armed assault with intent to murder of Mr. Jones, and (2) that he shared the intent required for that offense.

The defendant rests on his argument as to the charge of murder, noting that the Commonwealth does not argue that Christopher Jones was the target of the shooting.

#### **Accessory After the Fact to Murder**

The defendant is charged with acting as an Accessory After the Fact to the crime of murder. As to this offense, the Commonwealth must prove beyond a reasonable doubt that after the murder of Cordell McAfee, Mr. Simpkins (1) harbored, concealed, maintained or assisted the shooters, or gave them some other aid, (2) knowing that they had committed murder, and (3) with the intent that the shooters should avoid or escape detention, arrest, trial or punishment.

The evidence, viewed in the light most favorable to the Commonwealth, established that at least one of the shooters ran into the backyard of 10 St. Mark's Road just after the shooting. The firearms linked to the shooting were later recovered from

Simpkins's apartment, along with the separated cylinder from one of the guns. All were wrapped in aluminum foil and covered in cinnamon. Simpkins's fingerprints were present on the aluminum foil. No prints were recovered from the guns themselves or the cylinder. A quantity of illicit drugs was also recovered, some of which was hidden with the cylinder and also concealed in foil and cinnamon.

There is absolutely no evidence to establish that Mr. Simpkins knew, at the time he concealed the weapons, that they had just been used to commit a murder. At most, the jury could find that Simpkins may have helped to hide contraband, including drugs as well as guns, when police began to surround his home.

### **Unlicensed Possession of Ammunition**

The defendant is charged with Unlawful Possession of Ammunition regarding the box of Remington cartridges recovered from a floor air duct in a bedroom of Simpkins's apartment. There is no evidence whatsoever that Mr. Simpkins possessed this ammunition. Testimony established that this was not Simpkins's bedroom, but rather a guest room of sorts. Detectives testified that both Simpkins's brother and father had stayed in the room from time to time. Additionally, a gun belt was recovered from the same bedroom, and was determined to belong to Simpkins's father, a law-enforcement officer.

The box contained its full supply of cartridges. It was processed for latent fingerprints, and two prints were recovered. All four defendants were excluded as the source of the prints.

### **Unlicensed Possession of Firearms**

The defendant is also charged with two indictments for Unlawful Possession of a Firearm (without an FID card). The Commonwealth asks the jury to make three possible inferences: (1) that Simpkins constructively possessed the guns because they were recovered from inside his home, (2) that he actually possessed the guns, because his fingerprints were present on the aluminum foil surrounding them, and (3) that he possessed them "jointly" with the shooters.

As to the inference that Simpkins possessed the guns because the shooters possessed them, the defendant rests on his argument as to the murder charge, reiterating that there is no evidence from which the jury could find that Simpkins knew about, intended, or assisted in McAfee's murder beforehand.

As to the inference that Simpkins's prints on the foil proves he possessed the guns, the defendant argues that there are equally likely and equally plausible alternatives: Simpkins may have handed aluminum foil to other individuals who then wrapped the guns. In support of this inference, the defendant notes that none of the individuals in the apartment had gunshot residue on their hands, and no fingerprints were recovered from either gun, or from the cylinder. The inference that the shooters may have masked their hands with gloves is fair and consistent with the evidence.

The evidence fails to support an inference that Simpkins had constructive possession of the guns simply because they were found in his home. There is no evidence that Simpkins might have exercised control over the weapons (no evidence that they belonged to him, that they belonged to anyone else in his home, that he procured them, or that he gave them to the shooters.) Moreover, the defendant notes that at least four other individuals were present in the apartment for a significant amount of time after Simpkins exited the house.

### **Argument**

In determining the defendant's motion for required findings of not guilty, the Court must "consider whether the evidence, together with all reasonable and possible inferences that may be drawn from it, is sufficient to permit a rational jury to find beyond a reasonable doubt the existence of every element of the crime charged." Commonwealth v. Swafford, 441 Mass. 329, 339 (2004), citing Commonwealth v. Latimore, 378 Mass. 671, 677, (1979). The defendant recognizes that the Court must examine the evidence in the light most favorable to the Commonwealth. Latimore, at 676-677.

The defendant suggests that at most, the jury could find that (1) Simpkins was present in his home after the shooting, along with four other men, (2) one of those men was later identified by an eyewitness as one of the shooters, (3) clothing and weapons linked to the murder were also present in Simpkins's home after the shooting, and that (4)

Simpkins may have helped to hide the weapons, as well as drugs, when police began to surround his home.

In Massachusetts, courts have found far more damning evidence insufficient to support findings of guilt. In Commonwealth v. Mandile, the Supreme Judicial court reversed the defendant's convictions for armed robbery and first-degree murder. 403 Mass. 93 (1988). The defendant was alleged to have participated in these crimes with an associate with whom he drove to the victim's home. (The jury acquitted Mandile of being the actual shooter, and apparently convicted him on the pre-Zanetti theory of joint venture.) On appeal, the Court determined that "the jury could have found that the defendant (1) participated in stealing guns to aid in the commission of some future offense, (2) was present during the commission of the murder, (3) knew the passenger was armed, (4) was the driver of a getaway car, and (5) attempted to conceal the crime through both the disposal of the murder weapon and inconsistent statements to the police." Mandile at 100. Nevertheless, the Court declined to find sufficient evidence that the defendant shared the intent to kill the victim, or that he even knew that his associate intended to kill the victim, stating that "the critical issue is whether the jury properly may have inferred that the defendant acted with knowledge of a premeditated murder and with an intent to assist in committing the crime or whether, to the contrary, the Commonwealth only offered evidence of mere association..." Mandile at 100, citing Commonwealth v. Salemme, 395 Mass. 594, 602, (1985).

The evidence in Mandile clearly established that the defendant traveled to the scene of the crime with the shooter, stayed there during the commission of the crime, and then drove the shooter away. The evidence against Mr. Simpkins does not even begin to approach the evidence against Mr. Mandile. Here, unlike Mandile, even the Commonwealth does not argue that Simpkins was present during McAfee's murder. In fact, the evidence establishes that Simpkins was in his home prior to the shooting, and was not observed to leave his home until police surrounded his property. Also unlike Mandile, there is no evidence that Simpkins participated in procuring the weapons, or that he owned them or provided them to the shooters. In fact, there is no evidence to establish, as in Mandile, that Simpkins even knew the shooters were armed. Unlike Mandile, the Commonwealth's case against Simpkins is devoid of any evidence that he

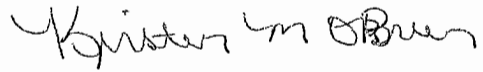
had any knowledge of or participation in McAfee's murder whatsoever. While the evidence, viewed in the light most favorable to the Commonwealth, suggests that at least one of the shooters eventually ran to the back of Simpkins's house, there is absolutely no evidence that Simpkins had any idea that the individual had just committed a murder.

Even assuming *arguendo* that the jury inferred that Simpkins had some knowledge of McAfee's murder beforehand, there is still a complete lack of evidence that Simpkins had any intent to kill McAfee. "In the context of a charge of murder, a specific intent crime, the Commonwealth must prove that the defendant '[shared] with the principal the mental state required for the crime.'" Mandile at 100. That Simpkins was "associated with one who committed the crime does not prove his participation." Commonwealth v. Swafford, 441 Mass. 329, 339 (2004).

The Commonwealth has established, at most, that Adam Simpkins may have helped conceal weapons in his home subsequent to a murder. The Commonwealth asks to jury to infer that based on that fact, he must have been aware of, shared the intent for, and actively participated in the murder beforehand, as well. Taken as a whole, the evidence does not support this inference beyond a reasonable doubt. See Commonwealth v. Swafford, 441 Mass. 329, 342-343 (2004). "In choosing among the many possible inferences from the evidence presented in this case the jury would necessarily have...to employ conjecture." Commonwealth v. Ferguson, 384 Mass. 13, 19 (1981). However, "no conviction may rest upon the piling of inference upon inference or conjecture and speculation. The inferential leaps that the Commonwealth asks are too great." Swafford at 343.

For the all of the foregoing reasons, the defendant requests that this Court enter findings of not guilty as to the indictments against him.

Respectfully submitted,  
By his attorney,

A handwritten signature in cursive script that reads "Kirsten M. O'Brien".

Kirsten M. O'Brien  
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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR CT.

CR. No. 2011-10142: 009 and 010

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 COMMONWEALTH )  
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 V. )  
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 ADAM SIMPKINS )  
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**DEFENDANT'S MOTION TO DISMISS**

Now comes the defendant in the above-named case and respectfully moves this Honorable Court to dismiss the above-numbered murder indictment on the grounds that any retrial of the defendant on that charge would violate his state and federal constitutional rights under double jeopardy and his common law rights to double jeopardy protection. The jury in this case was instructed that the defendant could not be found guilty of the murder charge and the accessory after the fact charge. Those two theories of criminal liability are mutually exclusive. The jury having returned a verdict of guilty on the accessory charge in fact rejected the murder charge; and, in any event, the defendant can not now be convicted of murder having been convicted of accessory after the fact.

The defendant further moves to dismiss the armed assault with intent to murder indictment for essentially the same reasons. The jury rejected that the defendant was involved in the underlying shootings when it convicted him of accessory after. There is no principled distinction between the murder and armed assault charges in the circumstances of this case.

After hearing, and for reasons stated on the record, the court DENIES the motion. (Gilbert), 11/27/12

In addition, any retrial on either indictment would be barred on double jeopardy grounds because the Commonwealth failed to introduce sufficient evidence to meet its burden as a matter of law. The defendant's motion for required findings on these two charges was erroneously denied.

Respectfully submitted,  
By his attorney,

A handwritten signature in black ink that reads "Kirsten M. O'Brien". The signature is written in a cursive, flowing style.

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
NO. SJ-2013-0395

COMMONWEALTH

vs.

ADAM SIMPKINS

AMENDED RESERVATION AND REPORT

The defendant Adam Simpkins has petitioned the single justice under G. L. c. 211, § 3, claiming that his retrial on murder and armed assault with intent to murder charges would violate double jeopardy. For the reasons stated below, I reserve and report this petition for determination by the full court.

On May 7, 2010, two men opened fire on Cordell McAfee and Christopher Jones, killing McAfee and missing Jones. The defendant was indicted on charges that included murder, armed assault with intent to murder, and accessory after the fact to the same murder. The prosecutor at trial did not contend that the defendant was one of the two men who fired the bullets; rather, the prosecutor argued that the defendant had solicited the two men to commit the murder, and had been an accessory after the fact to the murder by concealing in his home the two firearms that were used in the shooting. In her final

instructions at trial; the judge instructed the jury that, "under our law, [the defendant] cannot be convicted of both the crime of murder and the crime of being an accessory after the fact of murder." The jury convicted the defendant of being an accessory after the fact and two other indictments, but did not acquit the defendant of murder or armed assault with intent to murder; instead, the jury were deadlocked as to those indictments and a mistrial was declared. The Commonwealth has asked the judge to delay sentencing on the conviction of accessory after the fact, and seeks to retry the defendant on the indictments alleging murder and armed assault with intent to murder.

The defendant argues that double jeopardy precludes such a retrial for two reasons. First, he contends that, in light of the judge's instructions, the jury's finding of guilt on the indictment of accessory after the fact means that the jury "necessarily found that the [defendant] was not a perpetrator" of the murder. He also argues, citing Commonwealth v. Gajka, 425 Mass. 751, 754 (1997), and Commonwealth v. Berryman, 359 Mass. 127, 129 (1971), that, having been convicted of being an accessory after the fact of murder, he cannot also be convicted of murder. Second, he contends that the evidence at trial was insufficient as a matter of law to support a finding of guilt as to the indictments charging murder and armed assault with intent to murder.

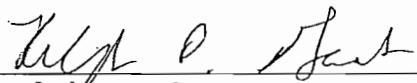
As to his first claim, the Supreme Judicial Court has declared that "[a] defendant may not properly be convicted of a crime and of being an accessory after the fact to the same crime." Gajka, supra, citing Berryman, supra ("under our law one cannot be both a principal in a crime and an accessory after the fact to the same crime"). If this is literally true, the defendant may not be retried for murder because he already has been convicted of being an accessory after the fact to murder. I reserve and report this issue to the full court to determine whether a defendant may not be convicted of both murder and accessory after the fact, or whether a defendant may not stand convicted of both crimes. If the former is true, a conviction of one precludes conviction of the other. If the latter is true, a defendant may be convicted of both crimes, but may not be sentenced as to both crimes; once a defendant is sentenced as to one of the crimes, the conviction of the other crime must be dismissed. Here, the defendant takes the former position; the Commonwealth effectively takes the latter.

Because I reserve and report as to this first claim, I deem it prudent to reserve and report the petition in its entirety, including the claim that the evidence is insufficient as a matter of law. Because this latter claim will require examination of the evidence at trial, a transcript of the trial, including the trial exhibits, must be made part of the record on appeal.

Therefore, I hereby stay trial in this case as to this defendant and reserve and report the petition for determination by the Supreme Judicial Court on the following papers:

1. Defendant's petition under G. L. c. 211, § 3;
2. Commonwealth's memorandum in opposition to the petition;
3. The trial transcript, exhibits, and verdicts;
4. Defendant's Reply Memorandum;
5. The Docket Sheet in SJ-2013-395; and
6. This Amended Reservation and Report.

The defendant is designated the appellant and the Commonwealth is designated the appellee. The parties shall confer with the Clerk of the Supreme Judicial Court for the Commonwealth regarding the service and filing of briefs, and the date of oral argument. This matter shall proceed in all respects in conformance with the Massachusetts Rules of Appellate Procedure.

  
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Ralph D. Gants  
Associate Justice

Dated: December 12, 2013