

NO. SJC-12890

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IN THE SUPREME JUDICIAL COURT  
FOR THE COMMONWEALTH OF MASSACHUSETTS

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SUFFOLK COUNTY

NO. SJC-12890

COMMONWEALTH OF MASSACHUSETTS,

RESPONDENT-APPELLEE

V.

NELSON MORA, ET AL,

PETITIONERS-APPELLANTS

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ON INTERLOCUTORY APPEAL FROM AN ORDER OF THE ESSEX  
COUNTY SUPERIOR COURT DENYING A MOTION TO SUPPRESS  
EVIDENCE

---

APPENDIX

Stephen D. Judge  
BBO #563390  
Hemsey Judge, PC  
47 Federal Street  
Salem, MA 01970  
978-744-2800

Mark G. Miliotis  
BBO #346060  
Prince Building  
63 Atlantic Avenue  
Boston, MA 02110  
617-720-2274

Elliot M. Weinstein  
BBO #520400  
83 Atlantic Avenue  
Boston, MA 02110  
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## TABLE OF CONTENTS

Docket Entries in the Lower Court.....	2
Indictments Returned Against Nelson Mora.....	11
Nelson Mora’s Initial Motion To Suppress Evidence.....	34
Typed Version of Handwritten Order on Initial Motion To Suppress Evidence....	36
Nelson Mora’s Subsequent Motion To Suppress Evidence Of Warrantless Video Surveillance And Any Fruits Therefrom.....	37
Nelson Mora’s Affidavit In Support Of His Motion To Suppress Evidence Of Warrantless Video Surveillance And Any Fruits Therefrom.....	39
Nelson Mora’s Supplemental Submission In Support Of His Right To Challenge The Constitutionality And Admissibility Of Prolonged Warrantless Video Surveillance And Any Fruits Therefrom.....	41
Randy Suarez’ Motion To Suppress Evidence.....	46
Randy Suarez’ Affidavit In Support of Motion To Suppress Evidence.....	57
Lymbel Guerrero’s Motion To Suppress Evidence.....	59
Lymbel Guerrero’s Affidavit In Support of Motion To Suppress Evidence.....	61
Commonwealth’s Opposition To Defendants’ Motions To Suppress Pole Camera Evidence And Exhibits Thereto.....	63
Stipulations Related To Defendants’ Motions To Suppress Evidence.....	102
Memorandum And Decision On Defendants’ Motions To Suppress Evidence Derived From Pole Cameras.....	107
Notice of Appeal.....	125
Motion To Permit Late Application For Leave To Take Interlocutory Appeal...	127
Defendants’ Joint Application For Leave To Take Interlocutory Appeal and Order of the Single Justice.....	130



**COMMONWEALTH OF MASSACHUSETTS  
ESSEX COUNTY  
Docket Report**

**1877CR00540 Commonwealth vs. Mora, Nelson**

<b>CASE TYPE:</b>	Indictment	<b>FILE DATE:</b>	08/30/2018
<b>ACTION CODE:</b>	94C/32E/F-1	<b>CASE TRACK:</b>	B - Complex
<b>DESCRIPTION:</b>	HEROIN/MORPHINE/OPIUM, TRAFFICKING IN 36 GRAMS OR MORE, LESS THAN 100 GRAMS c94C §32E(c)	<b>CASE STATUS:</b>	Open
<b>CASE DISPOSITION DATE:</b>	09/27/2018	<b>STATUS DATE:</b>	09/27/2018
<b>CASE DISPOSITION:</b>	Active	<b>CASE SESSION:</b>	Criminal 1 - K
<b>CASE JUDGE:</b>			

**DCM TRACK**

Tickler Description	Due Date	Completion Date
Pre-Trial Hearing	02/08/2019	
Final Pre-Trial Conference	06/10/2019	
Case Disposition	06/24/2019	
Notice of Appeal Filed	05/15/2020	02/18/2020

**PARTIES**

<p><b>Prosecutor</b> Massachusetts Attorney General One Ashburton Place Boston, MA 02108</p>	<p><b>Attorney for the Commonwealth</b>      <b>669602</b> Gina Masotta Office of the Attorney General Office of the Attorney General One Ashburton Place Boston, MA 02108 Work Phone (617) 727-2200 Added Date: 08/30/2018</p>
<p><b>Defendant</b> Mora, Nelson 68 Hillside Avenue #1 Lynn, MA 01902</p>	<p><b>Private Counsel</b>      <b>563390</b> Stephen D Judge Hemsey Judge, P.C. Hemsey Judge, P.C. The Felt Bldg 47 Federal Street Salem, MA 01970 Work Phone (978) 744-2800 Added Date: 09/27/2018</p>
<p><b>Surety</b> MOra, Victoria 66 Hillside Ave #1 Lynn, MA</p>	



**COMMONWEALTH OF MASSACHUSETTS  
ESSEX COUNTY  
Docket Report**

**PARTY CHARGES**

#	Offense Date/ Charge	Code	Town	Disposition	Disposition Date
1	05/22/2018 HEROIN/MORPHINE/OPIUM, TRAFFICKING IN 36 GRAMS OR MORE, LESS THAN 100 GRAMS c94C §32E(c)	94C/32E/F-1	Lynn		
2	05/22/2018 HEROIN/MORPHINE/OPIUM, TRAFFICKING IN 18 GRAMS OR MORE, LESS THAN 36 GRAMS c94C §32E(c)	94C/32E/E-1	Lynn		
3	01/12/2018 HEROIN/MORPHINE/OPIUM, TRAFFICKING IN 18 GRAMS OR MORE, LESS THAN 36 GRAMS c94C §32E(c)	94C/32E/E-0	Lynn		
4	02/14/2018 HEROIN/MORPHINE/OPIUM, TRAFFICKING IN 18 GRAMS OR MORE, LESS THAN 36 GRAMS c94C §32E(c)	94C/32E/E-0	Lynn		
5	05/10/2018 FENTANYL, TRAFFICKING IN MORE THAN 10 GRAMS c.94C, §32E(c½)	94C/32E/Q-1	Lynn		
6	03/23/2018 HEROIN/MORPHINE/OPIUM, TRAFFICKING IN 18 GRAMS OR MORE, LESS THAN 36 GRAMS c94C §32E(c)	94C/32E/E-0	Lynn		
7	02/01/2018 DRUG, POSSESS TO DISTRIB CLASS B c94C §32A(a)	94C/32A/G-1	Lynn		
8	03/01/2018 DRUG, DISTRIBUTE CLASS B c94C §32A(a)	94C/32A/E-1	Lynn		
9	03/19/2018 CONSPIRACY TO VIOLATE DRUG LAW c94C §40	94C/40-0	Lynn		
10	03/19/2018 CONSPIRACY TO VIOLATE DRUG LAW c94C §40	94C/40-0	Lynn		
11	03/19/2018 CONSPIRACY TO VIOLATE DRUG LAW c94C §40	94C/40-0	Lynn		
12	04/26/2018 HEROIN/MORPHINE/OPIUM, TRAFFICKING IN 36 GRAMS OR MORE, LESS THAN 100 GRAMS c94C §32E(c)	94C/32E/F-1	Lynn		



**COMMONWEALTH OF MASSACHUSETTS  
ESSEX COUNTY  
Docket Report**

<b>EVENTS</b>				
<b>Date</b>	<b>Session</b>	<b>Event</b>	<b>Result</b>	<b>Resulting Judge</b>
09/27/2018	Criminal 1 - K	Arraignment	Held as Scheduled	Feeley
11/21/2018	Criminal 1 - K	Pre-Trial Conference	Held as Scheduled	Drechsler
01/11/2019	Criminal 1 - K	Hearing on Compliance	Held as Scheduled	Tabit
02/28/2019	Criminal 1 - K	Hearing on Compliance	Held as Scheduled	Tabit
04/08/2019	Criminal 1 - K	Filing of Motions	Held as Scheduled	Drechsler
07/02/2019	Criminal 1 - K	Motion Hearing	Not Held	Karp
07/02/2019	Criminal 3 - I	Non-Evidentiary Hearing to Dismiss	Not Held	Lang
07/30/2019	Criminal 3 - I	Non-Evidentiary Hearing to Dismiss	Held as Scheduled	Lang
10/21/2019	Criminal 3 - I	Evidentiary Hearing on Suppression	Rescheduled	Howe
10/21/2019	Criminal 2 - J	Evidentiary Hearing on Suppression	Held as Scheduled	Feeley
12/12/2019	Criminal 1 - K	Conference to Review Status	Held as Scheduled	Drechsler
01/31/2020	Criminal 1 - K	Conference to Review Status	Held as Scheduled	Tabit
06/22/2020	Criminal 1 - K	Conference to Review Status		

<b>FINANCIAL SUMMARY</b>					
	<b>Money on Deposit</b>	<b>Assessed</b>	<b>Paid</b>	<b>Dismissed</b>	<b>Balance</b>
	<b>Total</b>	<b>25,000.00</b>	<b>25,000.00</b>	<b>0.00</b>	<b>0.00</b>

<b>Deposit Account(s) Summary</b>	<b>Received</b>	<b>Applied</b>	<b>Checks Paid</b>	<b>Balance</b>
<b>Total</b>	<b>25,000.00</b>			<b>25,000.00</b>



COMMONWEALTH OF MASSACHUSETTS  
ESSEX COUNTY  
Docket Report

INFORMATIONAL DOCKET ENTRIES

Date	Ref	Description	Judge
08/30/2018	1	Indictment(s) returned	
08/31/2018		Attorney appearance On this date Gina Masotta, Esq. added as Attorney for the Commonwealth for Prosecutor Essex County District Attorney	
09/06/2018	2	Habeas Corpus for defendant issued to Essex County House of Correction returnable for 09/27/2018 09:30 AM Arraignment.	
09/27/2018	3	Attorney appearance On this date Stephen D Judge, Esq. added as Private Counsel for Defendant Nelson Mora	
09/27/2018		Event Result:: Arraignment scheduled on: 09/27/2018 09:30 AM Has been: Held as Scheduled Comments: ftr-k ch Hon. Timothy Q Feeley, Presiding Appeared: Staff: Danette Schrader, Assistant Clerk Magistrate	Feeley
09/27/2018		Defendant arraigned before Court. Judge: Feeley, Hon. Timothy Q	Feeley
09/27/2018		Defendant waives reading of indictment Judge: Feeley, Hon. Timothy Q	Feeley
09/27/2018		Plea of not guilty entered on all charges. Judge: Feeley, Hon. Timothy Q	Feeley
09/27/2018		Bail set at \$0.00 Surety, \$25,000.00 Cash.  Judge: Feeley, Hon. Timothy Q	Feeley
09/27/2018		Bail warnings read Judge: Feeley, Hon. Timothy Q	Feeley
09/27/2018	4	Issued on this date:  Mittimus in Lieu of Bail Sent On: 09/27/2018 15:39:07	
09/27/2018	5	Commonwealth 's Notice Statement of the Case filed	
09/27/2018	6	Commonwealth 's Notice of Discovery filed	
09/27/2018	6.1	Case assigned to: DCM Track B - Complex was added on 09/27/2018	
10/01/2018	7	ORDER: Bail Memorandum/ Script Judge Feeley  Judge: Feeley, Hon. Timothy Q	Feeley
10/17/2018	8.1	's Joint Motion to Consolidate Bristol Indictments in Essex County filed and ALLOWED after hearing and by agreement for the reasons stated in Motion (Hallad,J)	



**COMMONWEALTH OF MASSACHUSETTS  
ESSEX COUNTY  
Docket Report**

11/21/2018	9	Commonwealth 's Notice of discovery filed	
11/21/2018	10	Commonwealth 's Notice of intent to seek forfeiture filed	
11/21/2018		Event Result:: Pre-Trial Conference scheduled on: 11/21/2018 09:30 AM Has been: Held as Scheduled Comments: FTR K (Cindy Hart) Hon. Thomas Drechsler, Presiding Appeared: Staff: Danette Schrader, Assistant Clerk Magistrate	Drechsler
01/11/2019		Event Result:: Hearing on Compliance scheduled on: 01/11/2019 09:30 AM Has been: Held as Scheduled Comments: FTR K (John Lynch) Hon. Salim Tabit, Presiding Appeared: Staff: Danette Schrader, Assistant Clerk Magistrate	Tabit
02/28/2019		Event Result:: Hearing on Compliance scheduled on: 02/28/2019 09:30 AM Has been: Held as Scheduled Comments: ftr-k ch Hon. Salim Tabit, Presiding Appeared: Staff: Danette Schrader, Assistant Clerk Magistrate	Tabit
04/08/2019		Event Result:: Filing of Motions scheduled on: 04/08/2019 09:30 AM Has been: Held as Scheduled Comments: FTR K (Cindy Hart) Hon. Thomas Drechsler, Presiding Staff: Danette Schrader, Assistant Clerk Magistrate	Drechsler
06/05/2019	11	Commonwealth 's Notice of List of Exhibits in Support of Motion Under M.G.L. c. 276, 58A	
06/05/2019	12	Defendant 's Objection to Commonwealth's Filing of 58 a and Introduction of Sale and Irrelevant Exhibits	
06/05/2019	13	Findings and Order on Motion for Detention pursuant to G.L. c. 276 § 58A.  Judge: Drechsler, Hon. Thomas	Drechsler
06/27/2019		Event Result:: Motion Hearing scheduled on: 07/02/2019 09:30 AM Has been: Not Held For the following reason: Transferred to another session Hon. Jeffrey Karp, Presiding Staff: Danette Schrader, Assistant Clerk Magistrate	Karp



**COMMONWEALTH OF MASSACHUSETTS  
ESSEX COUNTY  
Docket Report**

07/02/2019	14	Defendant 's Motion for leave to file motions related to the several search warrants in this case after relevant evidentiary motions related to warrantless surveillance have been heard and decided by this honorable court filed (Motion given to Judge Lang)	
07/02/2019	15	Defendant 's Motion to suppress evidence of warrantless video surveillance and any fruits therefrom filed (Motion given to Judge Lang)	
07/02/2019	16	Defendant 's Motion to suppress unlawfully seized evidence during a warrantless motor vehicle stop and seizure filed	
07/02/2019	17	Defendant 's Motion to suppress unlawfully intercepted wire, oral, and electronic communications and all evidence derived directly or indirectly therefrom filed	
07/02/2019		Event Result:: Non-Evidentiary Hearing to Dismiss scheduled on: 07/02/2019 09:30 AM Has been: Not Held For the following reason: Other event activity needed Hon. James F Lang, Presiding Staff: Patrick Collins, Assistant Clerk Magistrate	Lang
07/02/2019		Endorsement on Motion to Suppress, (#15.0): Other action taken 7/2/19 The defendant is to file a supplemental memorandum by 7/16/19 further articulating the basis for suppression of the "polcam" surveillance evidence and specifying the purpose of an evidentiary hearing (Example I.E, explaining what facts are contested).	Lang
07/08/2019		The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Stephen D Judge, Esq. Attorney: Gina Masotta, Esq.	
07/16/2019	18	Defendant 's Motion to suppress evidence of warrantless video surveillance and any fruits therefrom;Affidavit in support of his motion to suppress.;Supplemental submission in support of his right to challenge the constitutionality and admissibility of prolonged warrantless video surveillance and any fruits therefrom.	
07/16/2019	19	Defendant 's Motion to suppress unlawfully intercepted wire, oral, and electronic communications and all evidence derived directly or indirectly therefrom.;Memorandum of Law in support of his motion to suppress unlawfully intercepted wire, oral and electronic communications and all evidence derived directly or indirectly therefrom.	
07/16/2019	20	Defendant 's Motion for Leave to join in pre-trial motions and memoranda of co-defendants	
07/16/2019	23	Stephen D Judge, Esq.Nelson Mora's Memorandum in support of of his motion to suppress unlawfully intercepted wire, oral, and electronic communications and all evidence derived directly or indirectly therefrom.	
07/16/2019	24	Stephen D Judge, Esq.Nelson Mora's Memorandum in support of Supplemental submission of his right to challenge the constitutionality and admissibility of prolonged warrantless video surveillance and any fruits therefrom.	



**COMMONWEALTH OF MASSACHUSETTS  
ESSEX COUNTY  
Docket Report**

07/25/2019	21	Gina Masotta, Esq. Essex County District Attorney's Memorandum Memorandum in opposition to defendant's motion to suppress wiretap evidence.	
07/30/2019	22	Issued on this date:  Mittimus in Lieu of Bail Sent On: 07/30/2019 15:19:57	
07/30/2019	25	Commonwealth 's Objection to defendant's motions to suppress pole camera evidence. (Opposition)	
07/30/2019		Event Result: Non-Evidentiary Hearing to Dismiss scheduled on: 07/30/2019 02:00 PM Has been: Held as Scheduled Comments: FTR Hon. James F Lang, Presiding Staff: Patrick Collins, Assistant Clerk Magistrate	Lang
08/01/2019		Endorsement on Motion to suppress , (#19.0): DENIED  Judge: Lang, Hon. James F	Lang
08/01/2019		The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Stephen D Judge, Esq. Attorney: Gina Masotta, Esq. Surety: Victoria MOra	
08/01/2019	26	ORDER: Order on defendants motions to suppress wiretap evidence.: For the foregoing reasons, the defendants' motions to suppress wiretap evidence are DENIED (Lang, J.)	Lang
10/18/2019		Event Result: Evidentiary Hearing on Suppression scheduled on: 10/21/2019 02:00 PM Has been: Rescheduled For the following reason: Transferred to another session Hon. Janice W Howe, Presiding Staff: Patrick Collins, Assistant Clerk Magistrate	Howe
10/21/2019	27	ORDER: on defendants' motions to suppress wiretap evidence: For the foregoing reasons, the defendants' motions to suppress wiretap evidence are DENIED. Dated Aug. 2, 2109	Lang
10/21/2019		Event Result: Evidentiary Hearing on Suppression scheduled on: 10/21/2019 02:00 PM Has been: Held as Scheduled Hon. Timothy Q Feeley, Presiding Staff: Katelyn Draper, Assistant Clerk Magistrate	Feeley
10/21/2019	28	Gina Masotta, Esq.'s Joint Stipulation regarding (related) to defendants' motions to suppress pole camera evidence	



**COMMONWEALTH OF MASSACHUSETTS  
ESSEX COUNTY  
Docket Report**

11/04/2019	29	MEMORANDUM & ORDER:	Feeley
		MEMORANDUM AND DECISION ON DEFENDANTS' MOTIONS TO SUPPRESS EVIDENCE DERIVED FROM POLE CAMERAS	
		ORDER: Defendants' motions to suppress, filed or joined in, are DENIED for reasons discussed above, as well as for the reasons advanced in the Commonwealth's opposition memorandum.	
		Judge: Feeley, Hon. Timothy Q	
11/04/2019		The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Stephen D Judge, Esq. Attorney: Gina Masotta, Esq.	
11/19/2019	30	Notice of appeal filed: from the denial of his motion to suppress, entered on 11/04/2019 (Feeley, J.)	
		Attorney: Judge, Esq., Stephen D	
		Applies To: Mora, Nelson (Defendant)	
12/12/2019	31	Defendant 's Motion to Permit late filed Application for leave to take Interlocutory appeal filed and ALLOWED	
12/12/2019	32	Defendant 's Joint Application for Leave to Take Interlocutory Appeal Pursuant to G.L. chapter 278, s 28E, Mass r. Crim p 15a () and for stay of proceedings in the Trial Court filed and ALLOWED	
12/12/2019		Event Result: Conference to Review Status scheduled on: 12/12/2019 02:00 PM Has been: Held as Scheduled Comments: FTR-K CH Hon. Thomas Drechsler, Presiding Staff: Danette Schrader, Assistant Clerk Magistrate	Drechsler
01/31/2020		Event Result: Conference to Review Status scheduled on: 01/31/2020 09:30 AM Has been: Held as Scheduled Comments: FTR K (Cindy Hart) Hon. Salim Tabit, Presiding Staff: Danette Schrader, Assistant Clerk Magistrate	Tabit
01/31/2020		Docket Note: Indictment # 1873CR318 from Bristol Superior Court transferred on 10/17/18 entered today	
02/14/2020	33	Notice of Entry of appeal received from the Supreme Judicial Court Rec'd 1/31/2020 - Order: Interlocutory Appeal allowed to SJC (Lenk, J.) No: SJ-2019-0531	
02/14/2020	34	Court Reporter OTS - *EXPEDITED* is hereby notified to prepare one copy of the transcript of the evidence of 10/21/2019 02:00 PM Evidentiary Hearing on Suppression PER ORDER OF THE COURT	Drechsler

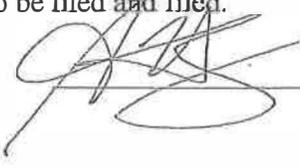


**COMMONWEALTH OF MASSACHUSETTS  
ESSEX COUNTY  
Docket Report**

02/18/2020	35	CD of Transcript of 10/21/2019 02:00 PM Evidentiary Hearing on Suppression received from from Approved Court Transcriber Quaverly H. Rothenberg.
02/18/2020	36	Notice to Clerk of the Supreme Judicial Court of Assembly of Record of Interlocutory Appeal
02/18/2020	37	Appeal: Statement of the Case on Appeal (Cover Sheet).
02/18/2020	38	Notice of assembly of record sent to Counsel

BRISTOL, SS. On this 13th day of September 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

No. 1873CR00318

INDICTMENT

COMMONWEALTH

vs.

NELSON MORA

Trafficking Oxycodone, 100 Grams or More

G.L. c. 94C, § 32E(c)(3)

Sup. C. July Sitting 2018

ESSEX, SS. On this 30<sup>th</sup> day of August in the year two thousand eighteen, this indictment was returned to and presented to the Said Superior Court, by the Grand Jury, and ordered to be filed.

ATTEST:

*Sharon R. Danville*

DIRECT  
LYNN

ESCR2018- 540

801

Commonwealth of Massachusetts

VERSUS

NELSON MORA

Superior Court

August

Term, 2018

Trafficking Oxycodone, 36 Grams or More

G.L. c. 94C, § 32E(c)(2)

AUG 30 2018

COMMONWEALTH OF MASSACHUSETTS

Essex, to wit:

At the *SUPERIOR COURT* begun and holden at Salem, within and for the County of Essex, on the first Monday of July in the year of our Lord two thousand eighteen.

*THE GRAND JURORS* for the Commonwealth of Massachusetts upon their oath present, that

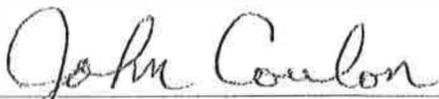
**NELSON MORA**

on the twenty-second day of May, in the year of our Lord two thousand and eighteen, at Lynn in the County of Essex aforesaid, did traffick in a derivative of opium; to wit: oxycodone, by knowingly or intentionally manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute or dispense, or by bringing into the Commonwealth a net weight of thirty-six grams or more, but less than one hundred grams of oxycodone, or any mixture containing oxycodone, in violation of Section 32E(c)(2) of General Laws Chapter 94C.

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A TRUE BILL

  
Assistant Attorney General

  
Foreperson of the Grand Jury

ESSEX, SS. On this 30<sup>th</sup> day of August in the year two thousand eighteen, this indictment was returned to and presented to the Said Superior Court, by the Grand Jury, and ordered to be filed.

ATTEST:

*Sharon R. Almeida*

DIRECT  
LYNN

ESCR2018-

540

*DDJ*

Commonwealth of Massachusetts

VERSUS

NELSON MORA

Superior Court

August

Term, 2018

Trafficking Heroin, 18 Grams or More

G.L. c. 94C, § 32E(c)(1)

AUG 30 2018

# COMMONWEALTH OF MASSACHUSETTS

Essex, to wit:

At the *SUPERIOR COURT* begun and holden at Salem, within and for the County of Essex, on the first Monday of July in the year of our Lord two thousand eighteen.

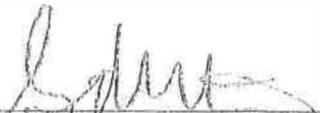
*THE GRAND JURORS* for the Commonwealth of Massachusetts upon their oath present, that

**NELSON MORA**

on the twenty-second day of May, in the year of our Lord two thousand and eighteen, at Lynn in the County of Essex aforesaid, did traffick in heroin, by knowingly or intentionally manufacturing, distributing, dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the Commonwealth a net weight of 18 grams or more but less than 36 grams of heroin or any mixture containing heroin, in violation of Section 32E(c)(1) of General Laws Chapter 94C.

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A TRUE BILL.

  
Assistant Attorney General

  
Foreperson of the Grand Jury

ESSEX, SS. On this 30<sup>th</sup> day of August in the year two thousand eighteen, this indictment was returned to and presented to the Said Superior Court, by the Grand Jury, and ordered to be filed.

ATTEST:



DIRECT  
LYNN

ESCR2018- 540



Commonwealth of Massachusetts

VERSUS

NELSON MORA

Superior Court August Term, 2018

Trafficking Heroin, 18 Grams or More

G.L. c. 94C, § 32E(c)(1)

AUG 30 2018

# COMMONWEALTH OF MASSACHUSETTS

Essex, to wit:

At the *SUPERIOR COURT* begun and holden at Salem, within and for the County of Essex, on the first Monday of July in the year of our Lord two thousand eighteen.

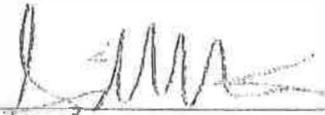
*THE GRAND JURORS* for the Commonwealth of Massachusetts upon their oath present, that

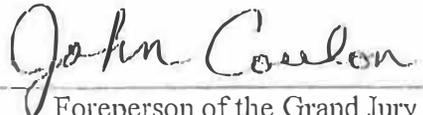
**NELSON MORA**

on the twelfth day of January, in the year of our Lord two thousand and eighteen, at Lynn in the County of Essex aforesaid, did traffick in heroin, by knowingly or intentionally manufacturing, distributing, dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the Commonwealth a net weight of 18 grams or more but less than 36 grams of heroin or any mixture containing heroin, in violation of Section 32E(c)(1) of General Laws Chapter 94C.

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A TRUE BILL

  
Assistant Attorney General

  
Foreperson of the Grand Jury

ESSEX, ss. On this 30<sup>th</sup> day of August in the year two thousand eighteen, this indictment was returned to and presented to the Said Superior Court, by the Grand Jury, and ordered to be filed.

ATTEST:



DIRECT  
LYNN

ESCR2018- 540

0054

Commonwealth of Massachusetts

VERSUS

NELSON MORA

Superior Court August Term, 2018

Trafficking Heroin, 18 Grams or More

G.L. c. 94C, § 32E(c)(1)

AUG 30 2018

# COMMONWEALTH OF MASSACHUSETTS

Essex, to wit:

At the *SUPERIOR COURT* begun and holden at Salem, within and for the County of Essex, on the first Monday of July in the year of our Lord two thousand eighteen.

*THE GRAND JURORS* for the Commonwealth of Massachusetts upon their oath present, that

**NELSON MORA**

on the fourteenth day of February, in the year of our Lord two thousand and eighteen, at Lynn in the County of Essex aforesaid, did traffick in heroin, by knowingly or intentionally manufacturing, distributing, dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the Commonwealth a net weight of 18 grams or more but less than 36 grams of heroin or any mixture containing heroin, in violation of Section 32E(c)(1) of General Laws Chapter 94C.

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

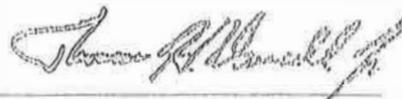
A TRUE BILL

  
Assistant Attorney General

  
Foreperson of the Grand Jury

ESSEX, SS. On this 30<sup>th</sup> day of August in the year two thousand eighteen, this indictment was returned to and presented to the Said Superior Court, by the Grand Jury, and ordered to be filed.

ATTEST:



DIRECT  
LYNN

ESCR2018- 540



Commonwealth of Massachusetts

VERSUS

NELSON MORA

Superior Court

August

Term, 2018

Trafficking Fentanyl, 10 Grams or More

G.L. c. 94C, § 32E(c)(2)

AUG 30 2018

COMMONWEALTH OF MASSACHUSETTS

Essex, to wit:

At the *SUPERIOR COURT* begun and holden at Salem, within and for the County of Essex, on the first Monday of July in the year of our Lord two thousand eighteen.

*THE GRAND JURORS* for the Commonwealth of Massachusetts upon their oath present, that

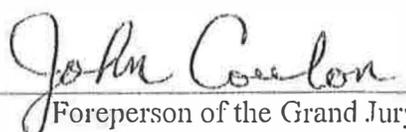
**NELSON MORA**

on the tenth day of May, in the year of our Lord two thousand and eighteen, at Lynn in the County of Essex aforesaid, did traffick in fentanyl by knowingly or intentionally manufacturing, distributing, dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the commonwealth a net weight of 10 grams or more of fentanyl or any derivative of fentanyl, or a net weight of 10 grams or more of any mixture containing fentanyl or any derivative of fentanyl, in violation of Section 32E(c½) of General Laws Chapter 94C.

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A TRUE BILL

  
Assistant Attorney General

  
Foreperson of the Grand Jury

ESSEX, SS. On this 30<sup>th</sup> day of August in the year two thousand eighteen, this indictment was returned to and presented to the Said Superior Court, by the Grand Jury, and ordered to be filed.

ATTEST:



DIRECT  
LYNN

ESCR2018- 540



Commonwealth of Massachusetts

VERSUS

NELSON MORA

Superior Court      August      Term, 2018

Trafficking Heroin, 18 Grams or More

G.L. c. 94C, § 32E(c)(1)

AUG 30 2018

# COMMONWEALTH OF MASSACHUSETTS

Essex, to wit:

At the *SUPERIOR COURT* begun and holden at Salem, within and for the County of Essex, on the first Monday of July in the year of our Lord two thousand eighteen.

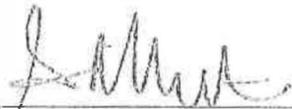
*THE GRAND JURORS* for the Commonwealth of Massachusetts upon their oath present, that

## NELSON MORA

on the twenty-third day of March, in the year of our Lord two thousand and eighteen, at Danvers in the County of Essex aforesaid, did traffick in heroin, by knowingly or intentionally manufacturing, distributing, dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the Commonwealth a net weight of 18 grams or more but less than 36 grams of heroin or any mixture containing heroin, in violation of Section 32E(c)(1) of General Laws Chapter 94C.

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A TRUE BILL



Assistant Attorney General



Foreperson of the Grand Jury

ESSEX, ss. On this *30<sup>th</sup>* day of *August* in the year two thousand eighteen, this indictment was returned to and presented to the Said Superior Court, by the Grand Jury, and order to be filed.

ATTEST: *Thomas R. Marshall Jr.*

DIRECT  
LYNN

ESCR2018- *540*

*007*

Commonwealth of Massachusetts

VERSUS

NELSON MORA

Superior Court August Term, 2018

Possession Class B with Intent to Distribute

94C/32A(a)

AUG 30 2018

COMMONWEALTH OF MASSACHUSETTS

Essex, to wit:

At the *SUPERIOR COURT* begun and holden at Salem, within and for said County of Essex, on the second Monday of **July** in the year of our Lord two thousand eighteen.

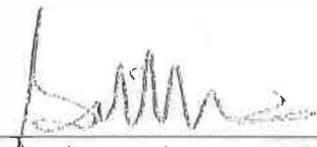
*THE JURORS* for the Commonwealth of Massachusetts upon their oath present, that

NELSON MORA

of **Lynn**, in said County of Essex, on the **first** day of **February**, in the year of our Lord **to thousand eighteen**, at **Lynn** in the County of Essex aforesaid

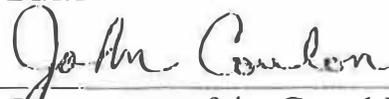
not being authorized by law, did knowingly or intentionally manufacture, distribute, dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance in Class B of G.L. chapter 94C, section 31, to wit: fentanyl,

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.



Assistant Attorney General

A TRUE BILL



Foreperson of the Grand Jury

ESSEX, ss. On this 30<sup>th</sup> day of August in the year two thousand eighteen, this indictment was returned to and presented to the Said Superior Court, by the Grand Jury, and ordered to be filed.

ATTEST:



DIRECT  
LYNN

ESCR2018- 540



Commonwealth of Massachusetts

VERSUS

NELSON MORA

Superior Court August Term, 2018

Distribution of Class B Substance, to wit: oxycodone

G.L. c. 94C, § 32A(a)

AUG 30 2018

# COMMONWEALTH OF MASSACHUSETTS

Essex, to wit:

At the *SUPERIOR COURT* begun and holden at Salem, within and for the County of Essex, on the first Monday of July in the year of our Lord two thousand eighteen.

*THE GRAND JURORS* for the Commonwealth of Massachusetts upon their oath present, that

**NELSON MORA**

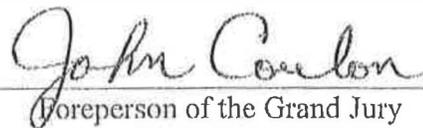
on the first day of March, in the year of our Lord two thousand and eighteen, at Lynn in the County of Essex aforesaid, did knowingly or intentionally manufacture, distribute, dispense, or possess with intent to manufacture, distribute or dispense a controlled substance in Class B of section thirty-one of General Laws Chapter 94C, to wit: oxycodone, a derivative of opium, in violation of section 32A(a) of General Laws Chapter 94C.

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A TRUE BILL



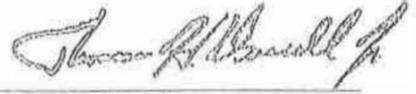
Assistant Attorney General



Foreperson of the Grand Jury

ESSEX, SS. On this 30<sup>th</sup> day of August in the year two thousand eighteen, this indictment was returned to and presented to the Said Superior Court, by the Grand Jury, and ordered to be filed.

ATTEST:



DIRECT  
LYNN

ESCR2018- 540

0009

Commonwealth of Massachusetts

VERSUS

NELSON MORA

Superior Court

August

Term, 2018

Conspiracy to Violate the Controlled Substance Act

G.L. c. 94C, § 40

AUG 30 2018

# COMMONWEALTH OF MASSACHUSETTS

Essex, to wit:

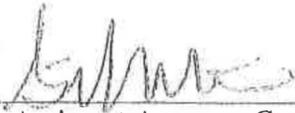
At the *SUPERIOR COURT* begun and holden at Salem, within and for the County of Essex, on the first Monday of July in the year of our Lord two thousand eighteen.

*THE GRAND JURORS* for the Commonwealth of Massachusetts upon their oath present, that

## NELSON MORA

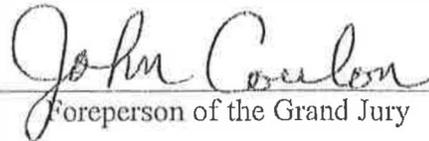
between on or about the nineteenth day of March, in the year of our Lord two thousand and eighteen, and on or about the twenty-second day of May, in the year of our Lord two thousand and eighteen, at Lynn and in other locations inside and outside the County of Essex aforesaid, did conspire with Erick Delrosario and Gregory Inuyama to violate the Controlled Substance Act, to wit: to traffick in 18 grams or more of oxycodone, a derivative of opium, said conspiracy being in violation of General Laws Chapter 94C, Section 40.

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.



Assistant Attorney General

A TRUE BILL



Foreperson of the Grand Jury

ESSEX, SS. On this 30<sup>th</sup> day of August in the year two thousand eighteen, this indictment was returned to and presented to the Said Superior Court, by the Grand Jury, and ordered to be filed.

ATTEST:



DIRECT  
LYNN

ESCR2018- 5740

210

Commonwealth of Massachusetts

VERSUS

NELSON MORA

Superior Court

August

Term, 2018

Conspiracy to Violate the Controlled Substance Act

G.L. c. 94C, § 40

AUG 30 2018

# COMMONWEALTH OF MASSACHUSETTS

Essex, to wit:

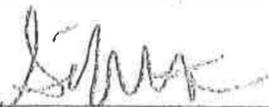
At the *SUPERIOR COURT* begun and holden at Salem, within and for the County of Essex, on the first Monday of July in the year of our Lord two thousand eighteen.

*THE GRAND JURORS* for the Commonwealth of Massachusetts upon their oath present, that

## NELSON MORA

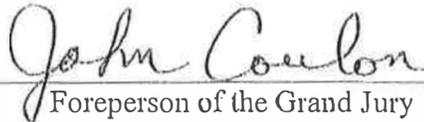
between on or about the nineteenth day of March, in the year of our Lord two thousand and eighteen, and on or about the twenty-second day of May, in the year of our Lord two thousand and eighteen, at Lynn and in other locations inside the County of Essex aforesaid, did conspire with Frantz Adolphe, Gregory Inuyama, Randy Suarez, Jose Luque, Jr., Rajner Llanaj, Erin Driscoll, Jason Desantis and/or others to violate the Controlled Substance Act, to wit: to manufacture, distribute, dispense, or possess with intent to manufacture, distribute or dispense oxycodone, a derivative of opium and a Class B controlled substance, said conspiracy being in violation of General Laws Chapter 94C, Section 40.

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.



Assistant Attorney General

A TRUE BILL

  
Foreperson of the Grand Jury

ESSEX, SS. On this 30<sup>th</sup> day of August in the year two thousand eighteen, this indictment was returned to and presented to the Said Superior Court, by the Grand Jury, and ordered to be filed.

ATTEST:



DIRECT  
LYNN

ESCR2018- 540



Commonwealth of Massachusetts

VERSUS

NELSON MORA

Superior Court

August

Term, 2018

Conspiracy to Violate the Controlled Substance Act

G.L. c. 94C, § 40

AUG 30 2018

# COMMONWEALTH OF MASSACHUSETTS

Essex, to wit:

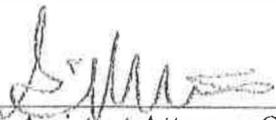
At the *SUPERIOR COURT* begun and holden at Salem, within and for the County of Essex, on the first Monday of July in the year of our Lord two thousand eighteen.

*THE GRAND JURORS* for the Commonwealth of Massachusetts upon their oath present, that

**NELSON MORA**

between on or about the nineteenth day of March, in the year of our Lord two thousand and eighteen, and on or about the twenty-second day of May, in the year of our Lord two thousand and eighteen, at Lynn and in other locations inside the County of Essex aforesaid, did conspire with Lymbel Guerrero and Richard Grullon-Santos to violate the Controlled Substance Act, to wit: to manufacture, distribute, dispense, or possess with intent to manufacture, distribute or dispense heroin and/or fentanyl, said conspiracy being in violation of General Laws Chapter 94C, Section 40.

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.



Assistant Attorney General

A TRUE BILL

  
Foreperson of the Grand Jury

COMMONWEALTH OF MASSACHUSETTS

ESSES, SS

SUPERIOR COURT  
NO. 2018 ESCR 0540

COMMONWEALTH

vs.

NELSON MORA

DEFENDANT NELSON MORA'S MOTION TO SUPPRESS EVIDENCE OF WARRANTLESS VIDEO SURVEILLANCE AND ANY FRUITS THEREFROM

The Defendant herein, NELSON MORA, hereby respectfully moves this Honorable Court, pursuant to the Fourth Amendment of the United States Constitution and Article Fourteen of the Massachusetts Declaration of Rights, to suppress evidence of and fruits from a warrantless surveillance protocol, which was used to seize and search the Defendant, to seize items and data, to conduct further searches and to secure search warrants in this case.

Further, the defendants complain that they were a victim of said unlawful searches and seizures and ask this Honorable Court that all property, to wit;

- 1.) Any and all items, data, observations or information seized during the above referenced searches;
- 2.) Any and all other or further articles or evidence, derived from such searches and seizures, including, any search warrants or further searches or observations made by police officers, and made possible by any unlawful conduct;

be suppressed and deemed unlawfully obtained and inadmissible as evidence against him and the defendant further moves that all aforementioned non-contraband property be ordered to be returned to him forthwith.

Said unlawful search and seizure began at an unknown time, but occurred at a minimum during the months of November and December of 2017 and the months of January, February, March, April and May of 2018, at various locations in and about Essex County, including 68 Hillside Ave, Lynn, MA, throughout the day and the unlawful searches and seizures collected video data related to the defendants comings and goings, and associations, throughout those times.

*11/11/18  
The basis for suppression of "pol cam" surveillance evidence and fruits are  
specifying the purpose of an inventory being 7/2/19  
submitted.*

The search and seizure was unlawful because:

1. There was no probable cause and exigent circumstances that existed which would obviate the need for a search warrant with respect to the searches and seizures.
2. The search of the defendant and his associations was illegal because it preceded a valid arrest or the issuance of a valid arrest warrant but rather was conducted for the purpose of establishing probable cause over an extended period of time, and, thus, preceded the establishment of probable cause to conduct a warrantless arrest.
3. The defendant enjoyed a reasonable expectation of privacy in his movements and associations and his right to so freely move and associate was violated by the government's protracted and intrusive surveillance in this case.
4. The property seized was not a proper subject for a seizure in toto, nor was it in plain view when observed from a lawful vantage point during momentary surveillance.
5. The defendant did not validly consent to the prolonged surveillance, nor did any person with valid authority to so consent.
6. There is no other recognized exception to the requirement of procuring a warrant present in the cause related to the prolonged collection of surveillance data directed at specific private individuals.

Therefore, the defendant says that the aforesaid evidence was obtained in violation of his right to be secure from an unreasonable search and seizure as guaranteed by the Fourth Amendment to the Constitution of the United States and Article Fourteen of the Declaration of Rights, and contrary to M.G.L. Chapter 276, Section 1, M.G.L. Chapter 41, Section 98, and contrary to the common law of this Commonwealth and these United States of America. The searches further infringed upon his liberty and right to free expression and association as guaranteed by the First Amendment to the Constitution of the United States and Article Nineteen of the Massachusetts Declaration of Rights. See also, U.S. v. Nia Moore-Bush and Daphne Moore, No. 3:18-30001-WGY (Dist. of Massachusetts)(Memorandum and Order, Young, J.)

Respectfully submitted,  
NELSON MORA, The Defendant,

By:

/s/ Stephen D. Judge

Stephen D. Judge, His Attorney

BBO# 563390

Hemsey Judge, PC

The Felt Building

47 Federal Street

Salem, MA 01070

Phone: (978) 744-2800

Fax: (978) 744-0024

Typed Version of Handwritten Order on Defendant's Motion To Suppress

The defendant is to file a supplemental memorandum by 7/16/19 further articulating the basis for suppression of "Pol Cam" surveillance evidence and specifying the purpose of an evidentiary hearing (i.e., explaining what facts are contested. Lang, J. 7/2/19

COMMONWEALTH OF MASSACHUSETTS

ESSES, SS

SUPERIOR COURT  
NO. 2018 ESCR 0540

COMMONWEALTH

vs.

NELSON MORA

---

DEFENDANT NELSON MORA'S MOTION TO SUPPRESS EVIDENCE OF WARRANTLESS  
VIDEO SURVEILLANCE AND ANY FRUITS THEREFROM

---

The Defendant herein, NELSON MORA, hereby respectfully moves this Honorable Court, pursuant to the First and Fourth Amendments of the United States Constitution and Articles Fourteen and Nineteen of the Massachusetts Declaration of Rights, to suppress evidence of and fruits from a warrantless surveillance protocol, which was used to seize and search the Defendant, to seize items and data, to conduct further searches and to secure search warrants in this case.

Further, the defendants complain that they were a victim of said unlawful searches and seizures and ask this Honorable Court that all property, to wit;

- 1.) Any and all items, data, observations or information seized during the above referenced searches;
- 2.) Any and all other or further articles or evidence, derived from such searches and seizures, including, any search warrants or further searches or observations made by police officers, and made possible by any unlawful conduct;

be suppressed and deemed unlawfully obtained and inadmissible as evidence against him and the defendant further moves that all aforementioned non-contraband property be ordered to be returned to him forthwith.

Said unlawful search and seizure began at an unknown time, but occurred at a minimum during the months of November and December of 2017 and the months of January, February, March, April and May of 2018, at various locations in and about Essex County, including 68 Hillside Ave, Lynn, MA, throughout the day and the unlawful searches and seizures collected video data related to the defendants comings and goings, and associations, throughout those times.

The search and seizure was unlawful because:

1. There was no probable cause and exigent circumstances that existed which would obviate the need for a search warrant with respect to the searches and seizures.
2. The search of the defendant and his associations was illegal because it preceded a valid arrest or the issuance of a valid arrest warrant but rather was conducted for the purpose of establishing probable cause over an extended period of time, and to obtain wiretap authority.
3. The defendant enjoyed a reasonable expectation of privacy in his movements and associations and his right to so freely move and associate was violated by the government's protracted and intrusive surveillance in this case.
4. The property seized was not a proper subject for a seizure in toto, nor was it in plain view when observed from a lawful vantage point during momentary surveillance.
5. The defendant did not validly consent to the prolonged surveillance, nor did any person with valid authority to so consent.
6. There is no other recognized exception to the requirement of procuring a warrant present in the cause related to the prolonged collection of surveillance data directed at specific private individuals.

Therefore, the defendant says that the aforesaid evidence was obtained in violation of his right to be secure from an unreasonable search and seizure as guaranteed by the Fourth Amendment to the Constitution of the United States and Article Fourteen of the Declaration of Rights, and contrary to M.G.L. Chapter 276, Section 1, M.G.L. Chapter 41, Section 98, and contrary to the common law of this Commonwealth and these United States of America. The searches further infringed upon his liberty and right to free expression and association as guaranteed by the First Amendment to the Constitution of the United States and Article Nineteen of the Massachusetts Declaration of Rights. See also, U.S. v. Nia Moore-Bush and Daphne Moore, No. 3:18-30001-WGY (Dist. of Massachusetts)(Memorandum and Order, Young, J.)

Respectfully submitted,  
NELSON MORA, The Defendant,  
By:

/s/ Stephen D. Judge

Stephen D. Judge, His Attorney  
BBO# 563390  
Hemsey Judge, PC  
The Felt Building  
47 Federal Street  
Salem, MA 01070  
Phone: (978) 744-2800  
Fax: (978) 744-0024

COMMONWEALTH OF MASSACHUSETTS

ESSES, SS

SUPERIOR COURT  
NO. 2018 ESCR 0540

COMMONWEALTH

vs.

NELSON MORA

---

DEFENDANT NELSON MORA'S AFFIDAVIT IN SUPPORT OF HIS MOTION TO  
SUPPRESS EVIDENCE OF WARRANTLESS VIDEO SURVEILLANCE AND ANY FRUITS  
THEREFROM

---

The undersigned affiant being aggrieved by unlawful searches, seizures, arrests, and interrogations, in reserving his constitutional privilege against self incrimination and incorporating by reference, the subject complaint, hereby on oath, deposes and states the following:

1. I am one of the defendant in the above-entitled matters. During all times relevant hereto, I was in residence at 68 Hillside Ave, Lynn, MA.
2. 68 Hillside Ave is a residential of home in a neighborhood on the Lynn/Swampscott line. The entirety of Hillside Ave contains residential properties without any commercial enterprises nor is it a major throughway utilized by commercial vehicles.
3. I expected not to be subject to ongoing surveillance by the government related to my comings and goings and the comings and goings of my guests and family on and around this private property, and other unknown locations where I was subject to such surveillance.
4. At no time did I knowingly consent to a search of any area in question, nor to the constant and prolonged surveillance of my person, home and vehicle.
5. I have since learned that the government utilized so-called "pol cam" surveillance techniques in multiple locations and at various times during 2017 and 2018. It is my understanding that such surveillance captured and/or recorded my comings and goings at various locations. At no time did I, or any of my co-defendant's to my knowledge, ever consent to the utilization of such surveillance nor the recording of it.

6. In affidavits filed with this court, and in discovery provided in this case, it has been documented that the “pol cam” surveillance techniques employed in this case caused my comings and goings and my associations with others to be filmed, recorded and reviewed. My attorney has advised me that warrants and affidavits herein reference such surveillance was conducted, at a minimum, at the following locations: 68 Hillside Ave, Lynn, 9 Shepard Street, Lynn, 7 Ruthven Terrace, Lynn, and 8 Swampscott Ave, Peabody.
7. It is also believed that my personal comings and goings and associations related to this surveillance and these locations, was capture and retained and utilized in this investigation.
8. It is my understanding that this surveillance was conducted around the clock and the video of it was stored, and is still being stored, and reviewed by the government. It is also my understanding that this surveillance involved remote access capabilities and that it was conducted for a period in excess of six months.
9. I have further been advised that a grand jury has indicted me, and the government is prosecuting me for several possessory offenses related to narcotics, and that it intends to introduce said items seized from the searches enumerated in this motion into evidence at trial against me. This evidence includes photographic, testimonial and video evidence gathered during surveillance of my comings and goings, my associations and the like.
10. My attorney has advised me that the searches and seizures that were conducted herein involve surveillance of my comings and goings and the comings and goings of my guests and family, related in part to the front of the home, parking area and garage areas affiliated with numerous locations, and that such locations are ones to which our society, and the common law of the United States and this Commonwealth, attaches and recognizes a reasonable expectation of privacy. It is my understanding that the searches set forth in this motion above, were conducted without a warrant and over an extended period of time.
11. I herein assert my right to challenge any and all conduct of the police in this matter, whether pursuant to my rights under the Massachusetts Declaration of Rights, the Constitution of the United States of America or the doctrine of automatic standing as developed in the Commonwealth of Massachusetts.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY.

---

NELSON MORA

COMMONWEALTH OF MASSACHUSETTS

ESSES, SS

SUPERIOR COURT  
NO. 2018 ESCR 0540

COMMONWEALTH

vs.

NELSON MORA

---

DEFENDANT NELSON MORA'S SUPPLEMENTAL SUBMISSION IN SUPPORT OF HIS  
RIGHT TO CHALLENGE THE CONSTITUTIONALITY AND ADMISSIBILITY OF  
PROLONGED WARRANTLESS VIDEO SURVEILLANCE AND ANY FRUITS THEREFROM

---

Now comes the Defendant, Nelson Mora, by and through undersigned counsel, and submits the following allegations and references in response to this Honorable Court's request for a more detailed summary of the Defendant's constitutional challenge herein, and in further support of his right right to challenge the specific prolonged warrantless governmental surveillance at issue and be heard thereon.

Pursuant to the Fourth Amendment of the United States Constitution and Article 14 of the Massachusetts Declaration of Rights, the Defendant Nelson Mora, by and through undersigned counsel, has moved to suppress evidence derived directly or indirectly as the fruits of the warrantless surveillance of his person, his home at 68 Hillside Ave. in Lynn, Massachusetts, and his activities, his family and guests, his travels and his associations and associates from approximately November, 2017 through May, 2018. As grounds for this motion, Mr. Mora alleged that his rights to privacy and freedom of association as guaranteed by the 1<sup>st</sup> and 4<sup>th</sup> Amendments were violated by prolonged warrantless monitoring and recording of his home, activities and associations.

In or about November, 2017, the Massachusetts State Police began investigating Mr. Mora for the alleged unlawful sale of drugs. Mora lived at 68 Hillside Ave. in Lynn, Massachusetts at all times relevant hereto.

On or about November, 2017, it is believed the government installed a pole camera on a utility pole across the street from Mora's home at 68 Hillside Ave. The residence is located on a quiet residential street. No judicial authorization was obtained for the use of the camera, which recorded and transmitted video evidence constantly. The government obtained information from the pole camera that was used for and included in the subsequent wiretap applications and, ultimately, search and arrest warrants.

tracked without a warrant certainly do as well. If a GPS tracker on a single car is offensive, a device which televises, records and amplifies an individual's every move certainly does as well.

Because of the continuous nature of the surveillance, all of Mr. Mora's movements and the movements of his family and guests in and out of the home were also captured for an extended period that is believed to have been in excess of six months. It is believed that the government was able to review footage at their leisure and make a determination regarding whether Mr. Mora was at home on specific dates and at specific times related to the investigation. Discovery has not disclosed the particular model and all capabilities of the pole camera used in this case, nor the specific dates of installation and extraction.

Based on the discovery provided, it is believed that the pole camera could zoom in on residents, visitors, vehicles, service providers - anyone and everyone who is connected in any way to Mr. Mora or the home. The principal aim of the pole camera surveillance, in the beginning, was a desire to learn the details of all of Mr. Mora's associations. In this case, the warrantless pole camera continuous surveillance was employed in part to justify the subsequent authority to wiretap Mr. Mora's phone, as well as other investigative techniques. The warrantless use of pole camera surveillance violated Mr. Mora's Fourth Amendment right to be protected from unreasonable government intrusion into his life. See *Carpenter v. United States*, 138 S.Ct. 2206, 2219 (2018).

When first confronted with a challenge to law enforcement's warrantless, extended use of pole camera surveillance, the First Circuit concluded that the defendant had failed to establish an expectation of privacy with regard to the front of his house. *United States v. Bucci*, 582 F.3d 108, 116 (1st Cir 2009). Unlike the pole camera used in the instant case, the one used in *Bucci* "had no remote capabilities that allowed agents to either change the view or magnification without being physically present at the scene." *Id.* The court's analysis focused on the absence of any physical obstruction to a view of the front of the house, suggesting that erection of fences or shrubbery was necessary to demonstrate an inclination to privacy. *Id.*

"[T]he legitimacy of a citizen's expectation of privacy in a particular place may be affected by the nature of the intrusion that occurs" *United States v. Nerber*, 222 F.3d 597, 601 (9<sup>th</sup> Cir. 2000). In *Katz v. United States*, 389 U.S. 347, 351 the Supreme Court found that a person had a reasonable expectation of privacy in a phone call placed from a public phone booth. Because the "Fourth Amendment protects people, not places[.]" what a person "seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected" *Id.*

The pole camera surveillance and recording catalogued the privacies of Mr. Mora's personal life - his visitors, deliveries, associations, etc, as well as the time and date of all of his physical movements in and out of her home - a "too permeating police surveillance" *United States v. Di Re*, 332 U.S. 581, at 595 (1948). The *Carpenter* court recognized that modern technology has created new challenges for Fourth Amendment analysis: A person has a "reasonable expectation of privacy in the whole of [her] physical movements" *Carpenter v. United States*, 138 S.Ct. 2206, at 2219 (2018); *United States v. Jones*, 565 U. S. 400, at 430 (2012)(Alito, J. concurring in judgment). *Carpenter* addressed law enforcement's warrantless accessing of CSLI information where that information is in the hands of a third party and concluded that the acquisition of the defendant's CSLI was a search that generally requires a warrant supported by probable cause. *Supra* at 221. The CSLI search invaded Carpenter's

personal privacy interests that are protected by the Fourth Amendment. *Carpenter v. United States*, 138 S.Ct. at 2213-2214.

It is difficult to imagine what could be a more permeating police surveillance than what is provided by a pole camera constantly recording an individual's activities. As the court observed in *Carpenter*, constant surveillance can reveal "familial, political, religious, and sexual associations." *Carpenter*, 138 S.Ct. at 2217, quoting *United States v. Jones*, 565 U.S. 400, at 415 (2012). As with CSLI data, the acquisition of a comprehensive and detailed recording of Mr. Mora's private life is a search deserving of Fourth Amendment protection and that protection is afforded by a warrant. This court should decline to grant the government unrestricted access to the intimacies of Mr. Mora's private life absent a warrant authorizing the intrusion.

Prolonged surveillance, for Fourth Amendment purposes, is not only quantitatively but also qualitatively different than those police practices allowed without the protections of a warrant: Prolonged surveillance reveals types of information not revealed by short-term surveillance, or documentary searches, such as what a person does repeatedly, what he does not do, and what he does ensemble.

Although no single rubric definitively resolves which expectations of privacy are entitled to protection, the analysis is informed by historical understandings "of what was deemed an unreasonable search and seizure when [the Fourth Amendment] was adopted." *Carroll v. United States*, 267 U. S. 132, 149, 45 S. Ct. 280, 69 L. Ed. 543, T.D. 3686 (1925). On this score, our cases have recognized some basic guideposts: first, that the Amendment seeks to secure "the privacies of life" against "arbitrary power" *Boyd v. United States*, 116 U. S. 616, 630, 6 S. Ct. 524, 29 L. Ed. 746 (1886). Second, and relatedly, that a central aim of the Framers was "to place obstacles in the way of a too permeating police surveillance." *United States v. Di Re*, 332 U. S. 581, 595, 68 10 S. Ct. 222, 92 L. Ed. 210 (1948). (emphasis added).

Before the police can set up a pole camera to record the activities intimately associated with a home, they should be required to heed the *Riley* admonition - get a warrant. *Riley v. California*, 573 U.S. 373, at 403 (2014). As Justice Brandeis explained in his famous dissent, the Court is obligated—as "[s]ubtler and more far-reaching means of invading privacy have become available to the Government"—to ensure that the "progress of science" does not erode Fourth Amendment protections. *Olmstead v. United States*, 277 U. S. 438, 473-474, 48 S. Ct. 564, 72 L. Ed. 944 (1928). Here the progress of science has afforded law enforcement a powerful new tool to carry out its important responsibilities. At the same time, this tool risks Government encroachment of the sort the Framers, "after consulting the lessons of history," drafted the Fourth Amendment to prevent. *Di Re*, 332 U. S., at 595, 68 S. Ct. 222, 92 L. Ed. 210.

Based on the unconstitutional and unreasonable manner in which the Defendant's actions were monitored through the use of a pole camera, the Defendant seeks suppression of all evidence derived, directly or indirectly, from the impermissibly intrusive surveillance as fruit of unconstitutional searches and seizures of his personal movements and associations wherein he had a reasonable expectation of privacy. See *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963); *United States v. Carson*, 793 F.2d 1141, 1147-48 (10<sup>th</sup> Cir. 1986); *Kyllo v. United States*, 533 U.S. 27, 30 (2001).

This kind of surveillance adversely impacted Mr. Mora's privacy rights and those of every person who visited his home, whether invited or uninvited. The Fourth Amendment was especially intended to protect the privacy of the home. The results of this prolonged, warrantless surveillance violated the privacy rights of Mr. Mora and also, his freedom of association rights protected by the First Amendment to the United States Constitution. He was unable to have any private association with anyone at his home; every visitor was surveilled and/or investigated. The warrantless use of pole camera surveillance violated Mr. Mora's Fourth Amendment right to be protected from unreasonable governmental intrusion into his life. *Carpenter v. United States*, 138 S.Ct. 2206, 2219 (2018). The pole camera footage/images must be suppressed, along with all evidence derived directly or indirectly therefrom. *Wong Sun v. United States*, 371 U.S. 471, 487-488 (1963).

In *United States v. Knotts*, 460 U.S. 276, 283-84 (1983), the Supreme Court left unanswered the issue of whether "twenty-four hour surveillance of any citizen of this country" by means of "dragnet-type law enforcement practices" violates the Fourth Amendment's guarantee of personal privacy. *Id.* This question was eventually answered in *United States v. Jones*, 132 S. Ct. 945, 181 L. Ed. 2d 911 (U.S. 2012) where the Supreme Court found that surveillance, if employed for an extended period of time, violated the Fourth Amendment. *Id.*

In *United States v. Jones*, the court addressed the warrantless monitoring of a suspect's vehicle via GPS tracking. The Court in *Jones* held that "the Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constituted a 'search,'" 132 S. Ct. 945, 181 L. Ed. 2d at 918, stressing the importance of the fact that the Government had "physically occupied private property for the purpose of obtaining information" *Id.* at 918. The Court found that, under such circumstances, it was not necessary to inquire about the target's expectation of privacy in his vehicle's movements in order to determine if a Fourth Amendment search had occurred. In the concurring opinions, however, this was precisely the consideration which dictated the outcome. Once the Court's factions are accounted for and their views distilled, *Jones* rests on privacy, not merely a cramped view of property. "In this case, for four weeks, law enforcement agents tracked every movement that respondent made in the vehicle he was driving. We need not identify with precision the point at which the tracking of this vehicle became a search, for the line was surely crossed before the 4-week mark." *Id.* at 964 (Alito, concurring).

If one compares the intrusive character of warrantless GPS with a warrantless video camera remotely monitored, one might reasonably pronounce the camera a more pernicious intrusion. A GPS device permits tracking of a singular vehicle, but only yields data tracing its path. A video camera achieves more, particularly where it is used and checked for an extended period of time. Trained on a person's home, over time, a video camera reveals an individual's friends and acquaintances, whether someone is carrying something, dropping off something, exiting a particular car or using another one, carrying on an extramarital affair, running a business from home, receiving deliveries by package truck, wearing particular clothing on a particular day – all manners of identification and detail, kept in a database for processing and sorting as law enforcement relentlessly compiles a rich data pool of actions and associations. Should such a televised feed show a mysterious package being moved or trash being discarded, law enforcement may jump on the opportunity for a timely search and seizure. If a long-term GPS offends because it permits law enforcement to "secretly monitor and catalogue every single movement of an individual's car" for an extended period, video monitoring through a pole camera where Mr. Mora's whereabouts are being

In further support of his right to be heard with respect to the constitutional violations alleged herein, Mr. Mora refers to U.S. v. *Nia Moore-Bush and Daphne Moore*, No. 3:18-30001-WGY (Dist. of Massachusetts)(Memorandum and Order, Young, J.), attached hereto. In Moore-Bush, Judge Young clearly articulates both the constitutional and common law

WHEREFORE, for the reasons set forth herein, defendant Nelson Mora requests that this Court allow this motion and Order that all evidence obtained through the unconstitutional warrantless surveillance in violation of his First and Fourth Amendment rights, and his protections under the Massachusetts Declaration of Rights be suppressed and that all evidence derived from that unconstitutional search and seizure also be suppressed.

REQUEST FOR HEARING: Mr. Mora requests a hearing at which the government must establish that the use of the pole camera surveillance and recording over a prolonged period of months falls within one of the narrow exceptions of the warrant requirement. If the Commonwealth and the Defendant are able to reach necessary stipulations regarding the use of the several "pol cam's" in this case it may obviate the need for an evidentiary hearing, however, absent such a stipulation, the Defendant's request stands.

Respectfully submitted,  
NELSON MORA, The Defendant,

By:

/s/ Stephen D. Judge

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COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
DOCKET NO. 2018 ESCR 00594

COMMONWEALTH

vs.

RANDY SUAREZ

---

**MOTION TO SUPPRESS EVIDENCE UNLAWFULLY DERIVED FROM POLE  
CAMERA SURVEILLANCE WITH INCORPORATED MEMORANDUM**

Now comes Randy Suarez in the above-entitled indictment and respectfully moves that this Honorable Court order that certain unlawfully obtained covert pole camera surveillance videos and photographs that are intended to be offered in evidence by the Commonwealth be excluded so as not to be admitted in evidence at trial; and that, to the extent that this said evidence was utilized to obtain wiretap and search warrants and was presented before the Grand Jury, it be excised and not considered.

In support of said motions, Mr. Suarez says that government conduct has caused areas over which he, his family members and their visitors and guests possessed a reasonable expectation of privacy to be unlawfully intruded upon by means of covert cameras attached to poles that have recorded private conduct not intended to have been preserved in photographs and videos to be reviewed subsequently by law enforcement agents.

Mr. Suarez has been the target and subject of unlawful warrantless video surveillance performed by agents of the Massachusetts State Police Department at his and his family's

residence, 8 Swampscott Avenue, Peabody, MA. Based on the Affidavit of Sergeant Steven Racki #2778, Massachusetts State Police dated May 21, 2018 ["Racki Affidavit"], it is apparent that the government utilized covert pole cameras to surveil multiple locations, including the area of 8 Swampscott Avenue, Peabody MA. at various times over a seven-month period during 2017 and 2018 up to May 21, 2018.

8-10 Swampscott Avenue, Peabody, MA is in a residential neighborhood. There is a utility pole located on the sidewalk immediately adjacent to the entry door of Mr. Suarez's family home no more than twenty feet from the near corner of the building. A camera placed in that location would be capable of viewing the interior of the building through windows.

Mr. Suarez did not expect to be subject to ongoing surveillance by the government related to his comings and goings and the comings and goings of his family and guests on and around this private property, and other unknown locations where he was subject to such surveillance. At no time did he knowingly consent to any such searches of his person, his family members or associates.

At paragraphs numbered 177 and 178 of the Racki Affidavit in support of the application for search warrants of premises there is reference to there having been a pole camera situated in the area of Mr. Suarez's residence at 8 Swampscott Avenue in Peabody during the course of the investigation. The affiant states that, "In reviewing footage from the pole camera, I have seen an individual resembling Suarez coming and going from 8 Swampscott Ave. on multiple occasions." Additionally, Trooper

Mark O'Brien and the affiant have reviewed footage collected from the pole camera focused on Swampscott Ave., specifically they reviewed activity occurring on Wednesday May 2, 2018, at approximately 9:17 a.m. in order to confirm that Mr. Suarez exited the far-left door of his residence and walked to a silver Honda across the street. Also, "Trooper Mark O'Brien reviewed footage from the pole camera on the morning of May 20, 2018. He observed that, at approximately 9:35 a.m., Lymbel Guerrero arrived in the area of 8 Swampscott Ave in Peabody and entered the residence. Approximately two minutes later, both Guerrero and Suarez exited from the residence and left the area in Guerrero's white Infiniti."

Mr. Suarez hereby joins in, adopts and incorporates herein by reference the contents of any motions, affidavits and memorandum filed on behalf of all co-defendants herein.

#### FEDERAL STANDARD OF REVIEW

On June 3, 2019, in the case of *United States of America v. Nia Moore-Bush and Daphne Moore*, Criminal Action No. 3:18-30001-WGY, District Judge William G. Young of the United States District Court, District of Massachusetts in his Memorandum and Order addressed relevant Federal authority applicable to the present case. He allowed defendants' motion to suppress surveillance evidence derived from a stationary pole camera that monitored the front exterior of a defendant's residence over a period of eight months with technology that was capable of recording license plate numbers and creating a reviewable historical digital record.

He stated, and established a standard for consideration of the present motion, that:

Although the reasonable expectations test represents a relatively recent doctrinal innovation, the Supreme Court has taught that the public's understanding of unreasonable searches at the Fourth Amendment's framing informs the test's application. See *Carpenter v. United States*, 138 S. Ct. 2206, 2214 (2018) (quoting *Carroll v. United States*, 267 U.S. 132, 149 (1925)). The Supreme Court thus has identified two "basic guideposts" from history: "First, that the [Fourth] Amendment seeks to secure 'the privacies of life' against 'arbitrary power.' Second, and relatedly, that a central aim of the Framers was 'to place obstacles in the way of a too permeating police surveillance.'" *Id.* (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886); *United States v. Di Re*, 332 U.S. 581, 595 (1948)). These timeless guideposts point the Court on its way towards resolving this motion.

Judge Young's ruling, of course, does not address the protections provided by Article XIV of the Massachusetts Declaration of Rights, nor need it have considered the other state jurisdictions that have invoked the protections of their own constitutions in ruling upon the establishment of reasonable expectations of privacy. See *infra*.

## A REASONABLE EXPECTATION OF PRIVACY

In *Commonwealth v. One 1985 Ford Thunderbird Auto.*, 416 Mass. 603 (1993) the Supreme Judicial Court struck the early chord and set the table for the present analysis applicable to decide the instant motion.

The claimant in a forfeiture action argued that the government activity which was the subject of his pretrial motion in limine--the warrantless surveillance by helicopter of the property at 2 Spring Lane--constituted an illegal search in

violation of art. 14 of the Declaration of Rights of the Constitution of the Commonwealth.

Two police officers had flown over the claimant's parents' house in a helicopter. Three flights were conducted over the property, one at 1,500 feet, one at 800 feet, and one at 700 feet. On each of the passes, the officers could clearly see in the backyard an in-ground swimming pool which had been drained. In the bottom of the swimming pool, visible to the naked eye, were between 200 and 400 potted plants. One of the officers, using binoculars, was able to determine that the plants were marihuana plants. The officers took photographs of the swimming pool on each pass over the house. After the police conducted their aerial surveillance, the claimant covered the plants with a dark green mesh shade cover that had been ordered in advance.

At the time, the Court, at 416 Mass. 606, recognized that the issues under Federal law had been resolved in *Florida v. Riley*, 488 U.S. 445 (1989) where, considering similar facts, the United States Supreme Court concluded that the police, flying over an individual's property in a helicopter at an altitude of 400 feet, had not engaged in an illegal search.

At 416 Mass. 607, however the Court indicated that, "Article 14 may, however, afford greater protection to individual rights than does the Fourth Amendment to the United States Constitution. See *Guiney v. Police Comm'r of Boston*, 411 Mass. 328, 329 (1991); *Commonwealth v. Panetti*, 406 Mass. 230, 234-235 (1989); *Commonwealth v. Blood*, 400 Mass. 61, 68 & n. 9 (1987). Nevertheless, the Court concluded that this helicopter surveillance did not constitute an illegal search under art. 14.

For purposes of art. 14, as for the Fourth Amendment, whether a particular instance of government scrutiny, unauthorized by a warrant, constitutes an unreasonable search under constitutional standards, depends on whether the person had a "reasonable expectation of privacy," *Commonwealth v. Panetti, supra*, 406 Mass. at 231, quoting *California v. Ciraolo*, 476 U.S. 207, 211 (1986), that was violated by the government. It is conceded that the An individual has a subjective expectation of privacy in the well-shielded backyard of his house. The critical point is whether this expectation is one that society would recognize as objectively "reasonable," "justifiable," or "legitimate." *Id.*, 476 U.S. at 231-232.

The Court in *Commonwealth v. One 1985 Ford Thunderbird Auto* proposed the various factors in determining whether an individual has an objectively reasonable expectation of privacy. The factors include "whether the police had a lawful right to be where they were, *Commonwealth v. Panetti, supra*, 406 Mass. at 234; whether the public had access to, or might be expected to be in, the area from which the surveillance was undertaken, *id.*; the nature of the intrusion, *Commonwealth v. Blood, supra*, 400 Mass. at 70; and the character of the area (or object) which was the subject of the surveillance. *Commonwealth v. Mamacos*, 409 Mass. 635, 639-640 (1991). *Commonwealth v. Price*, 408 Mass. 668, 672-673 (1990). *Commonwealth v. Panetti, supra*. **The inquiry is one highly dependent on the particular facts and circumstances of the case.** [emphasis added]

The Court found, at 416 Mass. 608, that surveillance techniques that permit the police to eavesdrop, unsuspected, on private conversations, "threaten the privacy of our most cherished possessions, our thoughts and emotions." *Commonwealth v. Blood*,

*supra*, 400 Mass. at 70. However, in the case before them, the Court ruled that the views and photographs taken by the police indicated no comparable invasion of privacy. The police made three passes over the premises, the lowest at an altitude of 700 feet. No conversations could be overheard, nor was there any "physical interference with the claimant's normal use of the backyard area or other parts of the curtilage." Contrasting *People v. Sneed*, 32 Cal.App.3d 535, 543 & n. 1, 108 Cal.Rptr. 146 (1973) (helicopter surveillance from altitude of twenty to twenty-five feet unreasonable and probably illegal); *Commonwealth v. Ogliialoro*, 525 Pa. 250, 262-263, 579 A.2d 1288 (1990) (helicopter surveillance from an altitude of fifty feet caused substantial hazard within curtilage and constituted unreasonable search).

The Court instructed that the claimant had the burden of establishing that society would recognize as reasonable his expectation of privacy from government intrusion. *Commonwealth v. Montanez*, 410 Mass. 290, 301 (1991). At 416 Mass. 609, the Court found, contrary to the facts in the present motion, that helicopter flight at the altitudes indicated were legal, and that the police had the right to be where they were.

Finally, in *One 1985 Ford Thunderbird Auto* the Court also found that, **"We do not suggest that a person has no expectation of privacy from government intrusion in his or her backyard, or that aerial surveillance without a warrant can never amount to a search for purposes of art. 14. We conclude that, at least when the police have a reasonable suspicion that illegal activity is occurring in a backyard, and engage in brief, foreseeable aerial surveillance from a reasonable altitude where they have a right to be, it has not been demonstrated that an objectively reasonable expectation of privacy has been violated."** [emphasis added]

The Supreme Court of Hawai'i, however, recently, in the case of *State v. Quiday*, 405 P.3d 552 (2017), citing *State v. Davis*, 360 P3d 1161,1180 (New Mexico 2015) and *People v. Cook*, 41 Cal.3d 373,221 Cal. Rptr. 499, 710 P2d 299 (1985), held, at 405 P. 3d 553, that "aerial surveillance of the curtilage of a private residence conducted for the purpose of detecting criminal activity thereupon qualifies as a 'search' in the constitutional sense." Thereby, the evidence seized pursuant to the search warrant based upon the police officer's naked eye observations during three helicopter flyovers ("aerial recognizance missions") over two days at 420 feet was the fruit of the poisonous tree, and Quiday's motion to suppress was granted. The target of surveillance was the curtilage of a private residence, therein, and the Court reasoned, at 405 P3d 562, "that while a private citizen may tolerate casual glances by a passerby on a private, commercial, or government flight, this does not necessarily mean that an individual thereby foregoes his or her reasonable expectation of privacy from 'intensive spying by police officers for evidence of crime' in the curtilage of his or her home . . ." See *Cook, supra*, 710 P.2d at 310.

Judge Young's decision reinforces and updates that sentiment when he finds that he "does not ground his decision on *Carpenter's* holding but instead on its necessary reasoning; that is, a person does have some objectively reasonable expectation of privacy when in spaces visible to the public." See *Carpenter*, 138 S. Ct. At 2217.

The Court ruled narrowly that several aspects of the use of the Pole specifically in the case before it constituted a search: "(1) continuous video recording for approximately eight months; (2) focus on driveway and front of the house; (3) ability

to zoom in so close that it can read license plate numbers; and (4) creation of a digitally searchable log." The Court found that: "Taken together, these features permit the government to piece together intimate details of a suspect's life See *Carpenter*, 38 S.Ct. at 2217 (quoting *Jones*, 565 U.S. at 415 (Sotomayor, J., concurring))"

THE TIDE OF CONCERN OVER UNMANNED AERIAL SURVEILLANCE MAY BE APPLICABLE TO THAT OVER POLE CAMERA SURVEILLANCE

Clearly, there are parallel concerns in respect to increased surveillance equipment sophistication that impacts consideration of intrusions on privacy by means of drones, GPS devices, trash pulls, dissection of cellphone content and other means not even developed or known as of yet.

The Massachusetts legislature has before it Bill H.1406, AN ACT RELATIVE TO UNMANNED AERIAL VEHICLE presented by Michael J. Finn of West Springfield relative to penalties for unauthorized use of unmanned aerial vehicles that was referred to the Joint Committee on the Judiciary for hearing on May 14, 2019. In amending Chapter 269 of the Massachusetts General Laws, Section 20. at (c), the law would read "Whoever willfully uses an unmanned aerial vehicle to photograph, videotape or electronically surveil another person when the other person in such place and circumstances would have a reasonable expectation of privacy in not being photographed, videotaped or electronically surveilled, and without that person's knowledge and, shall be punished . . . ."

See Boston University School of Law review article AIRSPACE INANAGEOFDRONES, Troy A. Rule\*<http://www.bu.edu/bulawreview/files/2015/02/RULE.pdf>. This is an analysis applying property law and

principles of trespass to the issue of permissible drone activity.

See Tom Bush, *A Privacy-Based Analysis for Warrantless Aerial Surveillance Cases*, 75 Calif. L. Rev. 1767 (1987). This Comment maintains that courts have not adhered to the spirit of *Katz v. United States* in relying on concepts derived from property law to decide warrantless aerial surveillance cases. The result has been a constriction of fourth amendment rights. This Comment argues that courts could better protect fourth amendment rights by employing the Katz reasonable expectation of privacy test in a manner that acknowledges the chilling effect of government surveillance. Application of the Katz test would focus primarily on measures taken to prevent ground-based observations in determining whether an individual has a reasonable expectation of privacy from government aerial surveillance. Once an individual exhibits such an expectation, government aerial surveillance would, except in a few exceptions, be subject to the full measure of the warrant requirement.

See Paul Larkin Jr., Rumpel Senior Legal Research Fellow, Meese Center for Legal and Judicial Studies, Institute for Constitutional Government, *THE FOURTH AMENDMENT AND NEW TECHNOLOGIES* (September, 2013) <https://www.heritage.org/report/the-fourth-amendment-and-new-technologies#ftn45>. An approach from, perhaps, a conservative point of view written with consideration of 9/11 security concerns balanced versus protecting individual liberty.

Therefore, the defendant says that the aforesaid evidence was obtained in violation of his right to be secure from an unreasonable search and seizure as guaranteed by the Fourth Amendment to the Constitution of the United States and Article

Fourteen of the Declaration of Rights, and contrary to M.G.L. Chapter 276, Section 1, M.G.L. Chapter 41, Section 98, and contrary to the common law of this Commonwealth and these United States of America. The searches further infringed upon his liberty and right to free expression and association as guaranteed by the First Amendment to the Constitution of the United States and Article Nineteen of the Massachusetts Declaration of Rights. See also, *U.S. v. Nia Moore-Bush and Daphne Moore*, No. 3:18-30001-WGY (Dist. of Massachusetts) (Memorandum and Order, Young, J.)

For the defendant  
By his attorney,

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COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
DOCKET NO. 2018 ESCR 00594

COMMONWEALTH

vs.

RANDY SUAREZ

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DEFENDANT RANDY SUAREZ'S AFFIDAVIT IN SUPPORT OF HIS MOTION TO  
SUPPRESS EVIDENCE DERIVED FROM WARRANTLESS VIDEO SURVEILLANCE

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I, Randy Suarez, charged in the above-entitled indictment, do hereby depose and state, without waiving any rights against self-incrimination, upon my oath, that I have been the target and subject of unlawful warrantless video surveillance performed by agents of the Massachusetts State Police Department at my residence, 8 Swampscott Avenue, Peabody, MA., in which I possess a reasonable expectation of privacy as to me and my families activities thereabout, and in the associations I and my family members have with individuals coming to and from our home.

The following is relevant information derived in part from discovery material and pleadings of the Commonwealth received by my counsel:

1. 8-10 Swampscott Avenue, Peabody, MA is in a residential neighborhood. There is a utility pole located on the sidewalk immediately adjacent to the entry door of my family home no more than twenty feet from the near corner of the building.
2. I did not expect to be subject to ongoing surveillance by the government related to my comings and goings and the comings and goings of my family and guests on and around this private property, and other unknown locations where I was subject to such surveillance.
3. At no time did I knowingly consent to any such searches of my person, my family members or associates.
4. Based on the Affidavit of Sergeant Steven Racki #2778 Massachusetts State Police dated May 21, 2018 ["Racki Affidavit"], I have learned that the government utilized covert pole cameras to surveil multiple locations, including the area of 8 Swampscott Avenue, Peabody MA. at various times over a seven-month period during 2017 and 2018.

5. At paragraphs numbered 177 and 178 of the Racki Affidavit there is reference to there having been a pole camera situated in the area of my residence at 8 Swampscott Avenue in Peabody during the course of the investigation. The affiant states that, "In reviewing footage from the pole camera, I have seen an individual resembling Suarez coming and going from 8 Swampscott Ave. on multiple occasions." Additionally, Trooper Mark O'Brien and the affiant have reviewed footage collected from the pole camera focused on Swampscott Ave., specifically they reviewed activity occurring on Wednesday May 2, 2018, at approximately 9:17 a.m. in order to confirm that I exited the far left door of my residence and walked to a silver Honda across the street. Also, "Trooper Mark O'Brien reviewed footage from the pole camera on the morning of May 20, 2018. He observed that, at approximately 9:35 a.m., Lymbel Guerrero arrived in the area of 8 Swampscott Ave in Peabody and entered the residence. Approximately two minutes later, both Guerrero and Suarez exited from the residence and left the area in Guerrero's white Infiniti."
6. I understand that the wiretap and search warrants obtained in this investigation may have been issued based upon evidence seized by means of the pole cameras; that the grand jury that returned an indictment against me may have utilized the evidence derived from the illegal surveillance in its consideration and deliberation; and that the government is prosecuting me for several possessory offenses related to narcotics, and that it intends to introduce said seized surveillance video and photograph proof at trial against me. This evidence includes photographic, testimonial and video evidence gathered during surveillance of my comings and goings, my associations and my family members' activities; and evidence derived therefrom.
7. My attorney has advised me that the searches and seizures that were conducted herein involve surveillance of my comings and goings and the comings and goings of my guests and family, related to the area of my home and numerous other locations, and that such locations are ones to which our society, and the common law of the United States and this Commonwealth, attaches and recognizes a reasonable expectation of privacy. It is my understanding that the searches set forth in this motion above, were conducted without a warrant.
8. I herein assert my right to challenge any and all conduct of the police in this matter pursuant to my rights under the Massachusetts Declaration of Rights, the Constitution of the United States of America, and provisions of the doctrine of automatic standing as developed in the Commonwealth of Massachusetts.
9. I hereby adopt and incorporate herein the contents of any motions and memorandum filed on my behalf and all such that are filed by co-defendants herein, including the content of any affidavits submitted.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY.

---

RANDY SUAREZ

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT DEPARTMENT  
ESCR2018-0592

COMMONWEALTH

V.

LYMBEL GUERRERO

**MOTION TO SUPPRESS EVIDENCE OBTAINED FROM POLE CAMERA  
SURVEILLANCE WITH INCORPORATED MEMORANDUM OF LAW**

Lymbel Guerrero, by his attorney, moves that this Court suppress all evidence obtained as a result of pole camera surveillance during the course of the investigation resulting in the above numbered indictment.

Mr. Guerrero submits that the pole camera surveillance was an unlawful warrantless search and seizure in violation of rights guaranteed him by the First and Fourth Amendments to the United States Constitution and Article 14 of the Massachusetts Declaration of Rights.

In *United States v. Moore-Bush and Moore*, United States District Court amended memorandum and order dated June 4, 2019, District Judge William Young applied the evolving principles and rationale of privacy and expectations of privacy as articulated by the United States Supreme Court in *United States v. Jones*, 565 U.S. 400 (2012) and *Carpenter v. United States*, 138 S. Ct. 2206 (2018) and held that an eight month surveillance by pole camera of a private residence raised Fourth Amendment concerns sufficient to require suppression of the pole camera evidence.

Mr. Guerrero submits that the same principles apply to this case, as well as the more expansive privacy considerations available under the Massachusetts Declaration of Rights, and that all evidence obtained directly and indirectly from the pole camera surveillance be suppressed.

LYMBEL GUERRERO  
By his attorney,

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COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT DEPARTMENT  
ESCR2018-0592

COMMONWEALTH

V.

LYMBEL GUERRERO

**AFFIDAVIT IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE OBTAINED  
FROM POLE CAMERA SURVEILLANCE**

I, Lymbrel Guerrero, do hereby state that:

1. I am the defendant in the above captioned indictment;
2. I have learned the following from discussions with my attorney and review of discovery documents produced by the Commonwealth that Law Enforcement utilized pole camera surveillance during the course of the investigation including at:

8-10 Swampscott Ave, Peabody from 3/23/18 at 12 p.m. – 5/23/18 at 3:19 p.m.

68 Hillside Avenue, Lynn, from 12/6/17 at 11:43 a.m. – 5/23/18 at 3:19 p.m.

9 Shepard Street, Lynn from 4/4/18 at 8:48 a.m. – 5/23/18 at 3:20 p.m.

9 South Elm Street, Lynn from 5/9/18 at 7:35 a.m. – 5/23/18 at 3:20 p.m.

7 Ruthven Terrace, Lynn from 5/18/18 at 8:13 a.m. – 5/23/18 at 3:20 p.m.

3. My personal movements, activities, and associations were recorded and stored in digital and searchable data formats from pole camera surveillance located at 68 Hillside Avenue, Lynn and 8-10 Swampscott Avenue, Peabody (to date I have been unable to ascertain whether I was surveilled by the other pole cameras listed above);

4. Personal movements, activities, and associations of several of the co-defendants named in the above captioned indictment were also recorded and stored in digital and searchable data formats;

5. While the cameras were up and running, investigators could remotely view the video from a web-based browser in real-time, as well as search and review prior footage. The cameras had zoom capabilities and angle movement. While the investigation was ongoing, the data from each pole camera was stored on a State Police server. After the cameras were down, for storage purposes, the data was removed from the server and transferred onto hard drives.

6. Information from the pole camera surveillance and recordings was used in an omnibus affidavit of Steven Racki in support of applications for search warrants and electronic surveillance which resulted in issuance of search warrants and electronic surveillance orders which in turn produced evidence the Commonwealth employed to obtain the above captioned indictment and will likely seek to use at trial.

7. I did not consent to being recorded by the pole camera surveillance cameras.

Signed under the pains and penalties of perjury this 23d day of July, 2019.

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Lymbrel Guerrero

COMMONWEALTH OF MASSACHUSETTS

ESSEX COUNTY, ss

SUPERIOR COURT DEPT.  
DOCKET NOs. 18-540, 542, 543, 544, 592, 593, & 594

COMMONWEALTH

v.

NELSON MORA, GREGORY INUYAMA, FRANTZ ADOLPHE,  
RICHARD GRULLON-SANTOS, LYMBEL GUERRERO, RANDY SUAREZ, &  
AGGELIKI ILIOPOULOS

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COMMONWEALTH'S OPPOSITION TO DEFENDANTS'  
MOTIONS TO SUPPRESS POLE CAMERA EVIDENCE

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Now comes the Commonwealth and respectfully requests that this Honorable Court deny the motions to suppress pole camera evidence filed and/or joined in by the defendants in the above-captioned matters.

INTRODUCTION

Co-defendants Nelson Mora, Lymbel Guerrero, Randy Suarez, Frantz Adolphe, Gregory Inuyama, Richard Grullon-Santos, and Aggeliki Ilopoulos are charged with drug trafficking and other drug-related offenses based on their participation in a large-scale drug distribution network operating in and around Lynn and Peabody, Massachusetts. The investigation that led to this case was extensive and included the use of street surveillance, undercover drug purchases, information from a confidential informant, video surveillance cameras commonly known as "pole cameras," GPS tracking of vehicles, cell site location data, search warrants at physical locations, and electronic surveillance of telephones used by a number of the defendants.

The defendants now seek to suppress all video surveillance evidence obtained from pole cameras installed at various public locations during the investigation. As grounds for their motions, they argue that warrantless installation and use of the cameras violated their rights under

both the Federal and Massachusetts Constitutions. However, as discussed more fully below, the police were not required to obtain warrants to use the cameras because the cameras captured only areas and activity that were exposed to the public, and the defendants had no reasonable expectation of privacy therein. Nor did the length of the pole camera surveillance render it unconstitutional because the law does not prohibit police from using cameras to more efficiently conduct surveillance that they could lawfully have conducted in-person. Furthermore, even if this Court were to find that the video surveillance at issue here somehow violated the Fourth Amendment or Article 14, suppression would not serve the deterrent purpose of the exclusionary rule because the police were acting pursuant to applicable law and had every reason to believe that use of the pole cameras was constitutional. Accordingly, the defendants' motions to suppress should be denied.

## FACTS

### **I. Overall Investigation**

This case stems from a long-term drug investigation by members of the Massachusetts State Police assigned to the Commonwealth Interstate Narcotics Enforcement Reduction Team (CINRET) and Attorney General's Office, Drug Enforcement Administration (DEA), Lynn Police Department, Danvers Police Department, and Beverly Police Department. The investigation began in the month of November of 2017, after police received information about an individual known as "Nelly" who was selling large quantities of oxycodone. Investigators identified "Nelly" as defendant Nelson Mora. They also learned that Shepard Street in Lynn served as his primary location for conducting drug transactions.

After a series of controlled purchases through a confidential informant in November and December 2017, investigators successfully introduced an undercover trooper to Mora. Between

December 2017 and March 1, 2018, they made a total of eight undercover buys from Mora – including five purchases of oxycodone and three purchases of heroin/fentanyl. Each of the buys occurred in essentially the same way. The undercover trooper contacted Mora by calling or texting his cell phone and placed an order for either oxycodone or fentanyl. Mora then directed the trooper to meet him on Shepard Street in Lynn or another location in that general area. Once at the meeting spot, Mora typically got into the trooper’s vehicle and the two exchanged drugs and money.

On March 19, 2018, the investigative team sought a wiretap warrant for the cell phone Mora used to communicate with the undercover trooper for each of the controlled buys. Superior Court Justice Timothy Feeley issued the wiretap warrant, authorizing the interception of oral and/or wire communications pertaining to illegal narcotics activities over Mora’s phone.

The court-authorized interceptions confirmed that Mora was engaged in the sale of oxycodone and fentanyl. Investigators intercepted numerous communications during which Mora coordinated the purchase and sale of illegal drugs. He exchanged dozens of calls and texts each day with drug customers. It was clear from the intercepted communications that a number of Mora’s regular oxycodone customers were re-distributing the pills they bought from Mora to their own customers.

Based on interceptions over Mora’s phone, as well as other information developed during the course of the investigation, investigators identified defendant Erick Delrosario as Mora’s primary source of supply for oxycodone. Delrosario was residing in New Jersey at the time. He and Mora regularly met at the Foxwoods Casino in Connecticut to exchange pills and money. After each meeting with Delrosario at Foxwoods, Mora brought the pills back to Massachusetts for illegal distribution. Mora sold some of the pills he regularly obtained from Delrosario to his drug customers in Lynn. He also gave some of the oxycodone to his associates – including

defendants Frantz Adolphe, Randy Suarez, and Gregory Inuyama – who in turn sold them to their own customers.

Throughout the wiretap, Mora was intercepted communicating with Adolphe, Suarez, and Inuyama on a regular basis. On multiple occasions, around the same time investigators were intercepting Mora making arrangements with Delrosario for oxycodone resupply runs, investigators also intercepted calls between Mora and Adolphe during which they discussed Adolphe getting pills from Mora. During the calls, Mora told Adolphe how many pills he could give Adolphe and Adolphe indicated that he was getting his money ready. When Mora returned home from resupply runs, he directed Adolphe to pick up the pills. Surveillance conducted in connection with the calls showed that Adolphe indeed met with Mora at Mora's house on Hillside Avenue in Lynn. During the course of interceptions, Mora also continued to use Shepard Street in Lynn as his primary location for meeting with drug customers and conducting street-level drug sales. Adolphe resides on Shepard Street. Throughout this seven-month investigation, Mora and Adolphe were seen at Shepard Street on a regular, if not daily, basis – both together and on their own – often meeting with drug customers and engaging in hand-to-hand transactions.

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Interceptions between Mora and Suarez indicated that, at times, Suarez obtained oxycodone from Mora and, on other occasions, Mora obtained oxycodone from Suarez. On several occasions, they discussed different types of oxycodone and the pricing for each. Suarez used multiple phones during the investigation, maintaining one particular phone subscribed in his name while also using other telephones that had no subscriber information associated with them – which is a common practice for those engaged in illegal drug distribution.

Intercepted phone calls between Mora and Inuyama indicated that Inuyama had his own oxycodone customer base and occasionally served as a “runner” for Mora, supplying Mora's

customers with oxycodone at Mora's direction. Inuyama also provided transportation for Mora when Mora made oxycodone resupply runs to the Foxwoods Casino. On several occasions, Mora used Inuyama's Honda Accord to pick up oxycodone from Delrosario at the casino. Interceptions between Mora and Inuyama made it clear that Inuyama was fully aware of the purpose of these trips and Mora compensated Inuyama by giving him oxycodone pills at cost.

On April 26, 2018, based on intercepted calls and related surveillance indicating that Mora and Delrosario had met at the Foxwoods Casino so that Mora could pick up a large quantity of oxycodone pills from Delrosario, investigators conducted a motor vehicle stop of Mora, who was operating Inuyama's Honda Accord. A subsequent search of the vehicle yielded approximately 977 oxycodone pills – weighing over 100 grams – concealed in the vehicle's engine compartment.

In addition to his lucrative oxycodone business, interceptions and physical surveillance demonstrated that Mora also had multiple customers who purchased heroin/fentanyl from him on a regular basis. Based on interceptions over Mora's phone, investigators identified defendant Lymbel Guerrero as one of Mora's sources of supply for heroin/fentanyl and later sought wiretap warrants for multiple phones used by Guerrero. Guerrero was intercepted communicating with both Mora and Suarez on a regular basis throughout the wiretap, often about drugs and money. In addition to the fentanyl-related calls with Mora, Guerrero also exchanged calls with Suarez about oxycodone and fentanyl. It was clear from interceptions that Guerrero was a sophisticated and large-scale dealer. He consistently expressed concerns about police surveillance and engaged in what investigators recognized as counter-surveillance behavior. He used multiple phones at a time, changed phones on a routine basis, and only used phones that were either subscribed in someone else's name or had no subscriber information associated with them. In total, investigators obtained wiretap warrants for four different phones used by Guerrero, including an initial warrant on April

5, 2018 and two subsequent warrants on April 23, 2018 and May 7, 2018. In addition to the calls intercepted between Guerrero, Mora, and Suarez, Guerrero was intercepted conducting drug deals with a number of other individuals for both fentanyl and oxycodone.

Guerrero was not Mora's only source of fentanyl during the investigation. Investigators also identified defendant Richard Grullon-Santos as an additional fentanyl supplier for Mora. From the time interceptions commenced over Mora's phone, investigators intercepted numerous narcotics-related communications between Mora and Grullon-Santos. On several different occasions early in the wiretap, the two were intercepted alerting each other to the presence of police vehicles in the areas in which they sold drugs and conducting counter-surveillance for one another. Later, in or around the end of April 2018, intercepted calls and corresponding physical surveillance also demonstrated that Mora obtained fentanyl from Grullon-Santos that Mora then sold to customers himself and also arranged for Grullon-Santos to meet with Mora's customers directly in order to sell fentanyl to them. For example, on May 10, 2018, interceptions over Mora's phone and corresponding surveillance demonstrated that Grullon-Santos supplied the fentanyl that Mora sold to an undercover trooper in another controlled purchase. That day, the undercover trooper arranged to purchase 15 grams of fentanyl from Mora for the price of \$900. Around the same time, one of Mora's regular fentanyl customers also ordered a quantity of fentanyl from Mora. Mora contacted Grullon-Santos and told him what the undercover trooper and his other customer had ordered. Mora initially made plans to have Grullon-Santos meet with both customers and conduct the transactions, but later decided to meet them himself. Before doing that, he drove to Grullon-Santos's house, where intercepted calls indicate he picked up the drugs from Grullon-Santos. Mora then met with the undercover trooper, where he gave the trooper approximately 13 grams of fentanyl in exchange for \$900. Surveillance observed Mora meet with his other drug

customer in the same area directly thereafter. Mora then returned to Grullon-Santos's house and calls intercepted between the two indicate that Mora dropped money off for Grullon-Santos from the two sales. Intercepted calls and surveillance indicate that Grullon-Santos provided fentanyl to Mora on other occasions during the course of the wiretap, including April 28, May 11, and May 20, 2018. From the interceptions, it was clear to investigators that, in addition to supplying Mora and Mora's customers with narcotics, Grullon-Santos also had his own customer base.

The wiretap portion of this investigation ran for approximately two months. The investigation culminated with the arrests of 13 individuals and the coordinated execution of search warrants on May 22, 2018 at nine locations, including the residences of Mora, Adolphe, Inuyama, Grullon-Santos, Suarez, Guerrero and Iliopoulos. In total, the search warrants yielded almost 2,400 pills, more than a kilogram of heroin/fentanyl, 75 grams of cocaine, and approximately \$415,000 in cash.

## **II. The Pole Cameras**

As part of the above-described investigation, the police used pole cameras in public locations in order to conduct surveillance. The pole cameras were installed in fixed locations in the area of the following addresses:

- (1) *68 Hillside Avenue, Lynn, MA*, which is the residence of defendant Nelson Mora. The Hillside Avenue camera afforded a view of a portion of the front of the house, as well as the street on which the house is situated and the sidewalk that runs in front of it. Screenshots of the view from the Hillside Avenue camera, on various dates, are

attached hereto as Exhibit 1.<sup>1</sup> The pole camera footage for this location runs from December 6, 2017 at 11:43 a.m. through May 23, 2018 at 3:19 p.m.

(2) *8-10 Swampscott Avenue, Peabody, MA*, which is the residence of defendant Randy Suarez. The Swampscott Avenue camera afforded a view of the front of the residence, as well as a driveway in front of the house (partially obscured by a neighboring Dunkin' Donuts), part of a second driveway on the side of the house, and the street on which the house is situated. Screenshots of the view from the Swampscott Avenue camera are attached hereto as Exhibit 2. The pole camera footage for this location runs from March 23, 2018 at 12 p.m. through May 23, 2018 at 3:19 p.m.

(3) *Shepard Street, Lynn, MA*. Defendant Frantz Adolphe resides at 9 Shepard Street, though the Shepard Street camera was not focused on his residence or any other particular residence. As noted above, Shepard Street was one of the primary locations at which Mora conducted his street-level drug transactions. The Shepard Street camera was installed to monitor the activities on Shepard Street in general. The camera afforded a view down the length of Shepard Street, which included a partial view of the top of the driveway to Adolphe's residence. Screenshots of the view from the Shepard Street camera are attached hereto as Exhibit 3. The pole camera footage for this location runs from April 4, 2018 at 8:48 a.m. through May 23, 2018 at 3:20 p.m.

(4) *7 Ruthven Terrace, Lynn, MA*, which is the residence of defendant Richard Grullon-Santos. The Ruthven Terrace camera afforded a partial view of the front of the house, which was largely obscured by a tree in a neighboring yard. Screenshots of the view

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<sup>1</sup> The Commonwealth is providing the screenshots attached hereto as exhibits to give the Court an idea of the views afforded by each pole camera. If the Court wishes to review the actual video footage, the Commonwealth will provide it.

from the Ruthven Terrace camera are attached hereto as Exhibit 4. The pole camera footage for this location runs from May 18, 2018 at 8:13 a.m. through May 23, 2018 at 3:20 p.m.

(5) *9 South Elm Street, Lynn, MA*, which is the residence of an individual named Carlos Perez who is not a charged defendant in this case. The pole camera footage for this location runs from May 9, 2018 at 7:35 a.m. through May 23, 2018 at 3:20 p.m.

Each of the pole cameras captured video, but not audio. While the cameras were operating, investigators could remotely view the video from a web-based browser in real time, as well as search and review previously recorded footage. The cameras had zoom and angle movement capabilities, which could be operated remotely by investigators (in real time only). In some instances, the zoom function enabled investigators to read the license plate on a car. (The screenshots attached hereto as Exhibit 5, for example, represent a “zoomed” view captured by the Hillside Avenue camera, in which Mora, Inuyama, and their vehicles can be seen in the street in front of the residence.) None of the pole cameras enabled investigators to see inside any residence. The cameras did not have any infrared or enhanced night vision capabilities. They captured only publicly viewable areas and activity.

Observations made by investigators via the pole cameras were included in affidavits submitted in support of the various search warrants obtained during this investigation, including warrants authorizing GPS tracking of vehicles, electronic surveillance of telephones, and the searches of the defendant’s residences.

While the investigation was ongoing, the data from each pole camera was stored on a State Police server. After the cameras were turned off, the data was removed from the server and transferred onto hard drives for storage. As part of the discovery process, counsel for each of the

defendants was advised that the Commonwealth needed a portable hard drive in order to produce the pole camera footage due to the large amount of data. All defendants who requested the footage and provided the Commonwealth with a hard drive were provided with the video.

## ARGUMENT

### **I. There was no unconstitutional “search” or “seizure” because the defendants had no reasonable expectation of privacy in video footage recorded by cameras installed in public locations which captured only publicly viewable areas and activity.**

The Fourth Amendment and Article 14 protect individuals from unreasonable searches and seizures. Commonwealth v. Almonor, 482 Mass. 35 (2019). For these protections to apply, however, the government’s conduct must amount to a search in the constitutional sense. Id., citing to Commonwealth v. Magri, 462 Mass. 360, 366 (2012). A search in the constitutional sense occurs “when the government’s conduct intrudes on a person’s reasonable expectation of privacy.” Commonwealth v. Augustine, 467 Mass. 230, 241 (2014); see Katz v. United States, 389 U.S. 347, 361 (1967). An individual has a reasonable expectation of privacy if (1) he or she individual has “manifested a subjective expectation of privacy in the object of the search,” and (2) “society is willing to recognize that expectation as reasonable.” Augustine, 467 Mass. at 242 (2014).

In evaluating whether an individual has an objectively reasonable expectation of privacy, the Supreme Judicial Court (SJC) looks to “various factors,” including “whether the police had a lawful right to be where they were; whether the public had access to, or might be expected in, the area from which the surveillance was undertaken; the nature of the intrusion; and, the character of the area (or object) which was the subject of surveillance.” (citations omitted) Commonwealth v. One 1985 Ford Thunderbird Auto, 416 Mass. 603, 607 (1993); see Almonor, 482 Mass. at 42, n. 10 (2019); Commonwealth v. Williams, 453 Mass. 203 (2009); Commonwealth v. Welch, 420

Mass. 646, 653-654 (1995). The defendant bears the burden of establishing that the government intruded on a reasonable expectation of privacy. Almonor, 482 Mass. at 40 (2019); One 1985 Ford Thunderbird Auto, 416 Mass. at 608-609 (1993).

To begin, in the present case, none of the defendants has established that they manifested a subjective expectation of privacy in the views afforded by the pole cameras in this case. First, the Shepard Street camera was not focused on any particular residence. Though Adolphe resided on Shepard Street, the camera did not record his comings and goings from his residence. Rather, it merely recorded the activities of Adolphe, Mora, and their associates on Shepard Street in general, which was the primary area where they conducted their drug distribution activities. Second, the residences of Mora, Suarez, and Grullon-Santos captured by the other three pole cameras were located in populated residential areas and had no fences, walls, or other objects that would obstruct the views of passersby. The lack of any attempt to obscure the residences and driveways from public view weighs against a finding that the defendants manifested a subjective expectation of privacy. United States v. Tuggle, No. 16-CR-20070-JES-JEH, 2018 WL 3631881 (C.D. Illinois Jul. 31, 2018), citing to Kyllo v. United States, 533 U.S. 27, 33 (2001); see United States v. Bucci, 582 F.3d 108, 116-117 (1st Cir. 2009). Third, three of the defendants, including Guerrero, Inuyama, and Iliopoulos, did not live in any of the areas subject to pole camera surveillance. Guerrero was occasionally recorded coming and going from Suarez's residence in Peabody and outside Mora's residence in Lynn, and Inuyama was likewise recorded on occasion outside of, or coming and going from, Mora's residence. But there is no indication that either Guerrero or Inuyama ever lived in or were overnight guests at any of the residences. This significantly undercuts any argument that they had an expectation of privacy in any of the areas at which pole camera surveillance was conducted. See United States v. Bailey, No. 15-CR-6082G,

2016 WL 6995067 (W.D.N.Y. Nov. 29, 2016) (denying motion to suppress pole camera footage because defendant had no reasonable expectation of privacy in the publicly viewable areas outside a residence at which he was, at best, an occasional overnight guest), citing to United States v. Brooks, No. 15-CR-6157G, 2016 WL 1749394 (W.D.N.Y. May 2, 2016) (“I agree with the government...that a somewhat closer question exists as to whether defendants [as occasional overnight guests] have established standing to challenge the items seized from the exterior of the residence”).

Nonetheless, even if this Court finds that any of the defendants had a subjective expectation of privacy in the views afforded by the pole cameras, it is not one that society would find objectively reasonable. “What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.” *Katz*, 389 U.S. at 351. “Accordingly, courts have routinely held that ‘people generally do not have a legitimate expectation of privacy in open and accessible areas that the public is prepared to recognize as reasonable,’ United States v. Lace, 669 F.2d 46, 50 (citations omitted), and ‘[n]o reasonable expectation of privacy inheres in what is left visible to the naked eye. United States v. Gori, 230 F.3d 44, 50 (2nd Cir. 2000) (citations omitted).” United States v. Mazarra, No. 16-CR-576, 2017 WL 4862793, \* 9 (S.D.N.Y. Oct. 27, 2017).

Here, the pole cameras were installed in public locations. They recorded only areas and activity that were exposed to the public. No audio was recorded, nor was there any physical trespass on or interference with any of the defendants’ property. The cameras did not provide a view into any home, and they did not track or record the defendants’ movements through any private spaces. The law does not “preclude an officer’s observations from a public vantage point where he has a right to be and which renders the activities clearly visible.” California v. Ciraolo,

476 U.S. 207, 213 (1986). The defendants cannot establish an objectively reasonable expectation of privacy when the cameras only captured what was visible to any passerby. See United States v. Houston, 813 F.3d 282, 287-88 (6th Cir. 2016) (defendant had no reasonable expectation of privacy in video footage recorded by a camera located on a public utility pole which captured the same views enjoyed by passersby on public roads and thus there was no Fourth Amendment violation); United States v. Gilliam, No. 02:12-CR-93, 2015 WL 5178197, \* 9 (W.D. Pennsylvania 2015) (defendant failed to establish reasonable expectation of privacy where images captured by pole camera were visible to any person in the public street looking at his home); Bucci, 582 F.3d at 116-117 (1st Cir. 2009) (defendant did not have an objectively reasonable expectation of privacy in the front of his home for Fourth Amendment purposes and therefore video evidence from a pole camera which afforded a view of defendant's driveway, garage door, and inside of the garage when the door was open was not subject to suppression); United States v. Jackson, 213 F.3d 1269, 1281 (10th Cir. 2000) (defendant had no reasonable expectation of privacy that was intruded upon by pole cameras which were capable of observing only what any passerby easily could have seen and incapable of viewing inside houses), vacated on other grounds, 531 U.S. 1033 (2000); United States v. Campuzano-Chavez, No. CR-15-00154-HE, 2016 WL 879326, \*4 (W.D. Okla. 2016) ("the Fourth Amendment is not implicated by video surveillance obtained from cameras posted outside private property, where they observe no more than what any passerby would be able to observe and where the defendant has no reasonable expectation of privacy in the area being viewed"); United States v. Birrueta, No. 13-CR-2134-TOR, 2014 WL 11369624, \*9 (E.D. Wash. 2014) (video surveillance from a pole camera was reasonable because it recorded outside of the front of defendant's home, from a vantage that anyone from the street could see, and there was no evidence that camera captured the inside of defendant's home or somehow employed techniques

that greatly enhanced its ability to view private goings-on, not visible to the naked eye); United States v. Baltes, 2013 WL 11319002, \*7 (N.D.N.Y. 2013) (no judicial authorization required where pole camera was secured in a public place and captured video of the exterior of defendant's residence); United States v. Aguilera, No. 06-CR-336, 2008 WL 375210, \*3 (E.D. Wis. 2008) (police could have stood on the street outside defendant's house and observed the comings and goings from his driveway; substitution of a camera for in-person surveillance does not offend the Fourth Amendment; and camera did not record activities within the defendant's home or its curtilage obscured from public view"), report and recommendation adopted, 2008 WL 444647 (E.D. Wis. 2008); United States v. Clarke, No. CRIM.3:04 CR SRU, 2005 WL 2645003, \*2 (D. Conn. 2005) (no Fourth Amendment protection extends to activities observable by the public "even assuming all the areas in which [defendant] conducted her activity were 'curtilage'"); United States v. West, 312 F. Supp. 2d 605, 616 (D. Del. 2004) ("[d]efendant admits that he was standing outside in public at the time he was videotaped, and therefore, [d]efendant cannot be said to have a legitimate expectation of privacy"); United States v. Thomas, No. CRIM. 3:02CR00072, 2003 WL 21003462, \*5 (D. Conn. 2003) (areas that a person knowingly exposes to the public, even in or surrounding his home, are not protected by the Fourth Amendment; defendant did not manifest a subjective expectation of privacy with respect to any of the areas that were subjected to surveillance); Rodriguez v. United States, 878 F. Supp. 20, 24 (S.D.N.Y. 1995) ("as the activity monitored by the video surveillance occurred entirely within a public place, [petitioner] had no reasonable expectation of privacy on the public street").

Furthermore, despite the defendants' claims to the contrary, the length of time over which the pole cameras were used in this case did not render the video recordings unconstitutional. Neither the Federal nor Massachusetts constitution punishes law enforcement for using technology

to more efficiently investigate crime. See Houston, 813 F.3d at 289-291 (6th Cir. 2016). While investigators theoretically could have stationed themselves to observe the areas captured by the pole cameras in this case round-the-clock, the fact that they instead used cameras does not make the surveillance unconstitutional. Id. The law does not prohibit police from more efficiently conducting surveillance with the aid of a camera rather than expending the resources to staff officers round-the-clock to make in-person observations. Id. The cameras only captured what was visible to any passerby in the neighborhoods in which they were located.

In arguing that the length of the surveillance period rendered the use of the pole cameras unconstitutional, the defendants rely in large part on United States v. Jones, 565 U.S. 400 (2012), and Carpenter v. United States, 138 S.Ct. 2206 (2018), as well as a recent opinion by District Judge William Young in United States v. Moore-Bush, No. 3:118-300001-WGY, 2019 WL 2341182 (D. Mass. June 4, 2019), holding that eight months of warrantless pole camera surveillance violated the defendants' rights under the Fourth Amendment. But neither Jones nor Carpenter compels suppression of the pole camera evidence in this case, and Moore-Bush is not binding precedent on this Court.

To be sure, it is true that, “[a]s technology has enhanced the Government’s capacity to encroach upon areas normally guarded from inquisitive eyes, [the Supreme] Court has sought to ‘assure[ ] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.’” Carpenter, 138 S.Ct. at 2214 (2018), quoting Kyllo, 533 U.S. at 34 (2001) ). Fourth Amendment jurisprudence has evolved along with technology. Thus, in United States v. Jones, the Supreme Court held that the government’s attachment of a GPS tracking device to a vehicle and its use of the device to monitor the vehicle’s movement, constituted a search for Fourth Amendment purposes. 565 U.S. at 404 (2012). The majority opinion relied on a trespass

theory, holding that the government physically intruded on the defendant's property when it placed the tracking device on the vehicle. Id. at 404-413. Since the pole cameras in this case were not installed on any property belonging to the defendants, they cannot show a constitutional violation under the Jones trespass approach and instead rely on the concurring opinions that long-term monitoring of a defendant's movements violates the Fourth Amendment even in the absence of a physical trespass to his property. More recently, in Carpenter v. United States, the Supreme Court held that the government's acquisition of cell-site location information (CSLI) violated the Fourth Amendment. 138 S.Ct. at 2217-2218 (2018). The Court reasoned that mapping a cell phone's location over 127 days provided an "intimate window into a person's life, revealing not only his particular movements, but through them his 'familial, political, professional, religious, and sexual associations'" and noted that cell phones "faithfully follow[] [their] owner[s] beyond public thoroughfares and into private residences, doctors' offices, political headquarters, and other potentially revealing locales." Id.

The defendants employ this reasoning to assert that the use of the pole cameras in this case violated their expectations of privacy in the whole of their movements over time. But this argument ignores a critical element of the Supreme Court's reasoning in Jones and Carpenter. Unlike a GPS tracker or CSLI, which can "generate a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations," Jones, 565 U.S. at 415 (2012); Carpenter, 138 S.Ct. at 2217 (2018), a stationary video camera only observes and records whatever happens to cross its fixed line of sight. See United States v. Kubasiak, No. 18-CR-120-PP, 2018 WL 4846761, \*5-7 (E.D. Wisconsin Oct. 5, 2018); United States v. Kay, No. 17-CR-16, 2018 WL 3995902, \*1-3 (E.D. Wisconsin Aug. 21, 2018); see also Houston, 813 F.3d at 289-290 (6th Cir. 2016); Mazzara, No.

16-CR-576, 2017 WL 4862793, \*12 (S.D.N.Y. Oct. 27, 2017). While the pole cameras here recorded all of the defendants' public activities in the surveilled areas, they did not record *any* of their activities outside the cameras' narrow fields of view. Id. The cameras could not follow them around their neighborhoods or inside their homes. They could not follow them into doctors' offices, political headquarters, or a place of worship. The pole camera surveillance was not so comprehensive as to monitor the defendants' every move. Thus, the video surveillance at issue here is categorically distinct from technologies such as GPS and CSLI tracking. See Kubasiak, No. 18-CR-120-PP, 2018 WL 4846761, \*5-7 (E.D. Wisconsin Oct. 5, 2018); Kay, No. 17-CR-16, 2018 WL 3995902, \*1-3 (E.D. Wisconsin Aug. 21, 2018); see also Houston, 813 F.3d at 289-290 (6th Cir. 2016); Mazzara, No. 16-CR-576, 2017 WL 4862793, \*12 (S.D.N.Y. Oct. 27, 2017). Considering that the "Fourth Amendment protects *people*, not places," Katz, 389 U.S. at 351, many of the concerns expressed by the Supreme Court in Carpenter and the concurring justices in Jones – for instance, that extended GPS monitoring 'enables the government to ascertain, more or less at will, [a person's] political and religious beliefs, sexual habits, and so on' – do not apply with the same force here. See Mazzara, No. 16-CR-576, 2017 WL 4862793, \*12 (S.D.N.Y. Oct. 27, 2017).

Indeed, nearly every federal court that has considered the Fourth Amendment implications of pole camera surveillance in the wake of Jones has determined that such surveillance does not violate an individual's reasonable expectation of privacy, generally finding that the Fourth Amendment is not implicated by surveillance cameras that capture only what is exposed to the public and law enforcement's use of technology to enhance and record the public view does not transform such conduct into a Fourth Amendment violation. See, e.g., Houston, 813 F.3d 282 (6th Cir. 2016) (approving warrantless use of pole camera to record area of defendant's residence for

10 weeks); Bucci, 582 F.3d 108 (1st Cir. 2009) (warrantless use of pole camera to record front of defendant's home for 8 months did not violate Fourth Amendment); Jackson, 213 F.3d 1269 (10th Cir. 2000) (no Fourth Amendment violation where FBI installed pole cameras without a warrant on telephone poles outside defendant's residence, which could be operated remotely and zoom in close enough to read license plates), vacated on other grounds, 531 U.S. 1033 (2000); United States v. Cantu, 684 Fed. Appx. 703 (10th Cir. 2017); United States v. Brooks, 911 F.Supp.2d 836 (D. Ariz. 2012); Mazzara, No. 16-CR-576, 2017 WL 4862793 (S.D.N.Y. Oct. 27, 2017) (21 months of pole camera surveillance of defendant's residence did not violate the Fourth Amendment); United States v. Birrueta, No. 13-CR-2134-TOR, 2014 WL 11369624 (E.D. Wash. Mar. 21, 2014); United States v. Krawczyk, No. CR12-01384-PHX-DGC, 2013 WL 2481275 (D. Ariz. June 10, 2013); United States v. Baltes, No. 8:11-CR-282, 2013 U.S. Dist. LEXIS 190420 (N.D.N.Y. Apr. 22, 2013); United States v. Nowka, Case No.: 5:11-CR-474-VEH-HGD, 2012 WL 6610879 (N.D. Ala. Dec. 17, 2012); but see United States v. Vargas, No. CR-13-6025-EFS, 2014 U.S. Dist. LEXIS 184672 (E.D. Wash. Dec. 15, 2014).

The same can be said of the few federal courts to address the issue since the more recent Carpenter decision. See e.g., Kubasiak, No. 18-CR-120-PP, 2018 WL 4846761, \*5-7 (E.D. Wis. Oct. 5, 2018) (finding that a video camera pointed at defendant's backyard did not implicate Carpenter); Kay, No. 17-CR-16, 2018 WL 3995902, \*1-3 (E.D. Wis. Aug. 21, 2018) (rejecting Carpenter-based challenge to use of pole camera focused on defendant's driveway and front yard for 87 days); United States v. Tuggle, No. 16-CR-20070-JES-JEH, 2018 WL 3631881 (C.D. Ill. Jul. 31, 2018) (declining to extend Carpenter to use of pole cameras that captured footage of defendant's residence for 18 months, noting that surveillance cameras have been around for decades); see also United States v. Kelly, No. 17-CR-175-PP, 2019 WL 2137370 (E.D. Wis. May

16, 2019) (warrantless video surveillance of exterior of apartment building and hallway outside of apartment used by defendant as a drug stash house does not implicate Carpenter); United States v. Gbenedio, No. 1:17-CR-430-TWT-JSA, 2019 WL 2177943 (Mar. 29, 2019) (denying Carpenter-based motion to suppress approximately 15 months of video surveillance capturing entrance to defendant's commercial business); but see Moore-Bush, No. 3:118-300001-WGY, 2019 WL 2341182 (D. Mass. June 4, 2019).

Importantly, the Court in Carpenter stressed that its decision was a "narrow one." 138 S.Ct. at 2220 (2018). Its holding was expressly limited to CSLI, with the Court noting that it was confronting "a new phenomenon: the ability to chronicle a person's past movements through the record of his cell phone signals." Id. at 2216. The Carpenter Court explicitly stated that its decision did not call into question "conventional surveillance techniques and tools, such as security cameras." Id. at 2220. Unlike the modern technology addressed in Carpenter, surveillance cameras have been around for decades. Tuggle, No. 16-CR-20070-JES-JEH, 2018 WL 3631881, \*3 (C.D. Ill. Jul. 31, 2018). Any suggestion by the defendants that a stationary video camera is some form of advanced technology requiring an evolved view of constitutional jurisprudence has no merit. Kubasiak, No. 18-CR-120-PP, 2018 WL 4846761, \*5 (E.D. Wis. Oct. 5, 2018).

Judge Young's opinion to the contrary in Moore-Bush is neither persuasive nor binding on this Court. He suggests that certain aspects of pole cameras – including the ability to "zoom in so close that [they] can read license plate numbers" and create a "digitally searchable log" – somehow makes them more objectionable than what he views as conventional security cameras. Moore-Bush, No. 3:118-300001-WGY, 2019 WL 2341182, \*8 (D. Mass. June 4, 2019). But none of those capabilities changes the fact that the cameras could *only* see what officers, or any member of the public, could see had they been standing on the street. If there was any indication that the

cameras could zoom in to see *inside* the defendants' houses, then an evolving technology argument would have more influence. See Kubasiak, No. 18-CR-120-PP, 2018 WL 4846761, \*5 (E.D. Wis. Oct. 5, 2018). Nor does it matter that law enforcement “did not install the pole camera[s] here ‘to guard against . . . crime,’ but to investigate suspects.” Contra Moore-Bush, No. 3:118-300001-WGY, 2019 WL 2341182, \*5 (D. Mass. June 4, 2019). “The Supreme Court has repeatedly held that the investigatory purpose of otherwise lawful observation does not render it unconstitutional.” Mazarra, No. 16-CR-576, 2017 WL 4862793, \*10 (S.D.N.Y. Oct. 27, 2017), citing to Ciraolo, 476 U.S. at 213-214 (1986) (holding that “it was irrelevant that the [police] observation from the airplane was directed at identifying the [marijuana] plants and that the officers were trained to recognize marijuana”) and Bond v. United States, 529 U.S. 334, 338, n. 2 (2000) (“subjective intent of the law enforcement officer is irrelevant in determining whether that officer’s actions violate the Fourth Amendment”).

The only thing that pole cameras can do that law enforcement agents arguably cannot do is conduct surveillance for a longer period of time at lower cost and with less likelihood of detection. But the duration of the surveillance is relevant only if the defendants had a reasonable expectation of privacy that their public conduct in publicly viewable areas would not be recorded. And as discussed above, they did not. Applying the familiar standards used by the SJC to analyze expectations of privacy, it is clear that no objectively reasonable expectation of privacy was violated by the use of surveillance cameras which were installed in public places where the police had a lawful right to be, captured only areas and activity exposed to the public, did not provide a view into any home, and did not interfere with the use of any property belonging to the defendants. See Commonwealth v. Rivera, 445 Mass. 119, 128-129 (2005) (felony murder defendant lacked reasonable expectation of privacy in threats and obscenities uttered at clerk in convenience store

open to the public); One 1985 Ford Thunderbird Auto, 416 Mass. at 608-609 (1993) (aerial surveillance from legal altitude of defendant's backyard, during which police took photos and used binoculars, did not violate any objectively reasonable expectation of privacy); Commonwealth v. Sergienko, 399 Mass. 291 (1987) (no legitimate expectation of privacy in the interior of an automobile in a parking lot open to and used by the public and police officer's use of a flashlight to see inside the vehicle did not alter the conclusion).

**II. Because the police acted in good faith and objectively reasonable reliance on binding precedent authorizing the video surveillance and there is no indication of any misconduct, suppression would not serve the deterrent purpose of the exclusionary rule and the pole camera evidence should be admissible.**

Even if this Court were to find that the video surveillance at issue here somehow violated the Fourth Amendment or Article 14, the defendants' motions to suppress should still be denied because the police were acting in good faith and had every reason to believe that use of the pole cameras was lawful.

In any consideration of police conduct, "[r]easonableness [i]s the 'touchstone'" of article 14 and the Fourth Amendment. Commonwealth v. Gaynor, 443 Mass. 245, 256 (2005). "The primary purpose of the exclusionary rule is to deter future police misconduct by barring, in a current prosecution, the admission of evidence that the police have obtained in violation of rights protected by the Federal and State Constitutions." Commonwealth v. Santiago, 470 Mass. 574, 578 (2015). "[W]here 'the exclusionary rule does not result in appreciable deterrence, then, clearly its use . . . is unwarranted.'" Commonwealth v. Wilkerson, 436 Mass. 137, 142 (2002), quoting United States v. Janis, 428 U.S. 433 (1976).

The United States Supreme Court recognizes a "good faith" exception to the exclusionary rule where the government "act[s] with an objectively reasonable good-faith belief that their conduct is lawful." Davis v. United States, 564 U.S. 229, 238 (2011). While Massachusetts has

not adopted the good faith exception, the SJC has never specifically articulated why Article 14 would prohibit it. Commonwealth v. Fredericq, 482 Mass. 70, 91 (2019) (Cypher, J., concurring in part and dissenting in part). Instead, Massachusetts cases have focused on whether the violations are substantial and prejudicial. Id.; see Commonwealth v. Beldotti, 409 Mass. 553, 559 (1991) (denying exclusion of evidence because intrusion was minimal, but noting “we do not rely on any theory the police were proceeding in good faith reliance [on] a defective search warrant”); Commonwealth v. Sheppard, 394 Mass. 381, 391 (1985) (holding that deficiency as to particularity in warrant not prejudicial under Art. 14 where search was conducted as if warrant were in compliance and, thus, was not unreasonable). The SJC has said that “the mere fact that an unlawful search and seizure has occurred should not automatically result in the exclusion of any illegally seized evidence.” Commonwealth v. Gomes, 408 Mass. 43, 46 (1990). This is because, where the exclusionary rule’s purpose would not be furthered, rigid adherence to it would only serve to frustrate the public interest in the admission of evidence of a crime. See Fredericq, 482 Mass. at 91 (2019) (Cypher, J., concurring in part and dissenting in part), citing to Commonwealth v. Brown, 456 Mass. 708, 715 (2010).

Consistent with these principles, exclusion has been found to be inappropriate where a police officer’s conduct complies with governing law. See e.g., Brown, 456 Mass. at 715 (2010) (where actions of local police officers participating in federally-run investigation accorded with federal law, even if they did not accord with state constitutional principles, exclusion would “plainly frustrate the public interest disproportionately to any incremental protection it might afford”). Exclusion has also been deemed unwarranted where a police officer “objectively and reasonably relies on an act of another government body (such as a legislative enactment or agency records) and the actions of that government body are later determined to be incorrect or invalid...”

Commonwealth v. Miller, 78 Mass. App. Ct. 860, 864-865 (2011); see Commonwealth v. Wilkerson, 436 Mass. 137, 141-142 (2002) (officer arrested defendant on basis of information and records provided by RMV; even though RMV records later turned out to be erroneous, court upheld arrest because officer had done nothing wrong and thus, there was no “unlawful conduct for exclusion of the evidence to deter”). Similarly, courts have allowed introduction of evidence obtained through an illegality in cases where there was a technical error in procuring a search warrant. See, e.g., Commonwealth v. Holley, 478 Mass. 508, 525 (2017) (warrant did not comply with particularity requirement or limit scope search, but defendant “suffered no prejudice”).

“With the touchstone of art. 14 in mind . . . ,” Justice Cypher recently concluded in an opinion concurring in part with and dissenting in part from the majority in Commonwealth v. Fredericq that it is time for Massachusetts to “adopt the good faith exception to the exclusionary rule in circumstances . . . where the police had an objectively reasonable good faith belief that their conduct was lawful . . . .” 482 Mass. at 91 (2019) (Cypher, J., concurring in part and dissenting in part). Justice Lowy also wrote separately from the Fredericq majority to note that he appreciated Justice Cypher’s call for Massachusetts to recognize a good faith exception, though he noted that he did not believe it would be appropriate to do so in that case since the Commonwealth did not raise the issue. Id. at 85-86 (2019) (Lowy, J., concurring). Like Justice Cypher, Justice Lowy recognized that the primary purpose of the exclusionary rule is to deter future police misconduct and there is no such deterrent value in suppressing evidence when the police act with a good faith belief that their conduct is lawful.

In this case, based on controlling precedent at the time of their investigation – and still today – the police had every reason to believe that the video surveillance in which they engaged was lawful. As discussed above, there is no controlling precedent holding that the duration of

otherwise lawful surveillance is of constitutional significance. Moreover, there is no suggestion here of misconduct by any agent of the Commonwealth. To the contrary, they acted as reasonable officers would and should act under the circumstances. Significantly, this is a case in which law enforcement submitted hundreds of pages worth of affidavits in order to obtain search warrants for various purposes during the course of their investigation. It stands to reason that, had there been any reason for them to believe they were required to get a search warrant to use the pole cameras, they would have done so. Because there is no indication of any misconduct and the police acted in good faith and objectively reasonable reliance on binding precedent authorizing the video surveillance, suppression of the pole camera evidence would not serve the exclusionary rule's deterrent purpose. Accordingly, the video evidence obtained from the pole cameras should be admissible.

**CONCLUSION**

For all the foregoing reasons, the Commonwealth respectfully requests that this Honorable Court DENY the defendants' motions to suppress the pole camera evidence.

Respectfully submitted  
For the Commonwealth,

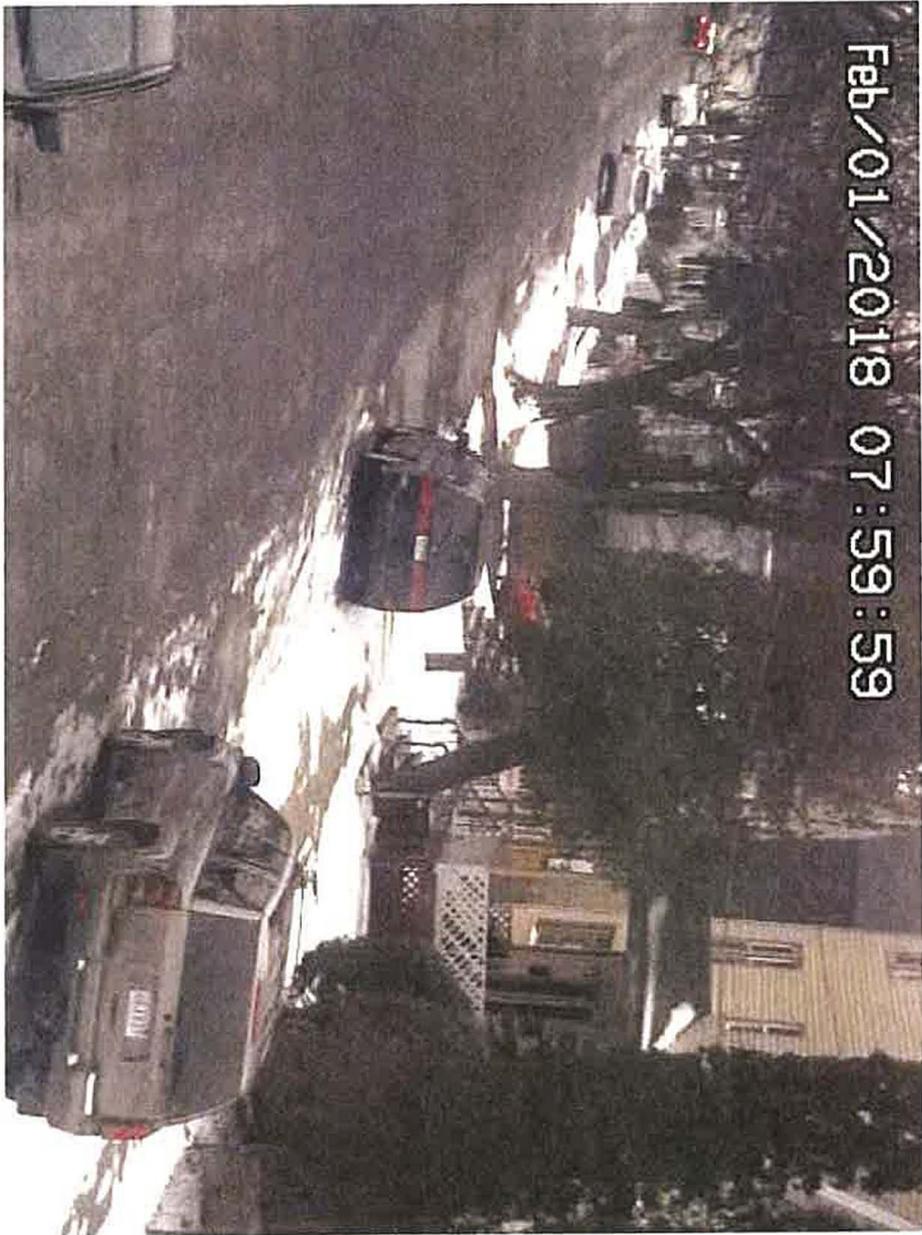
MAURA HEALEY  
ATTORNEY GENERAL

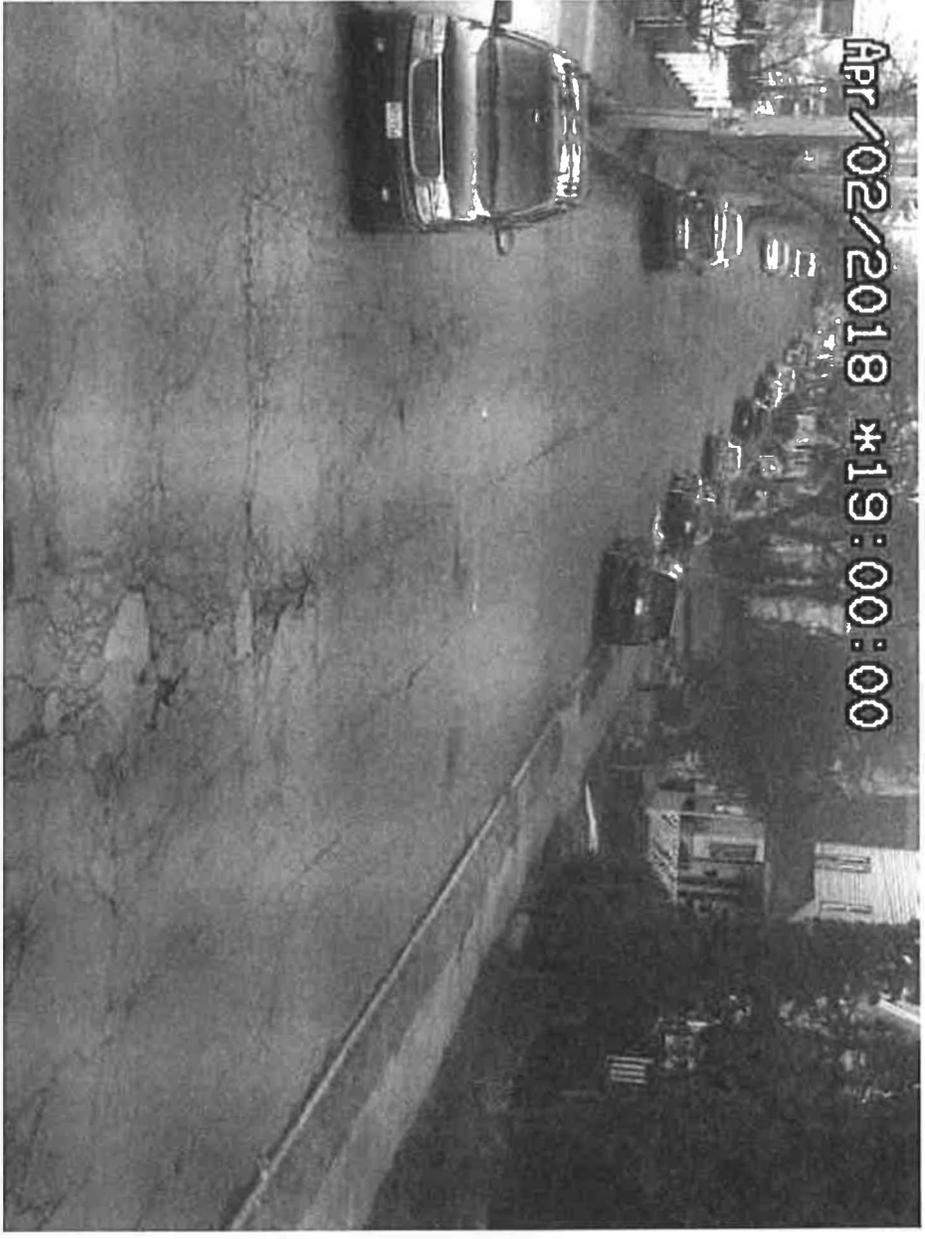


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Dated: July 30, 2019

# Exhibit 1





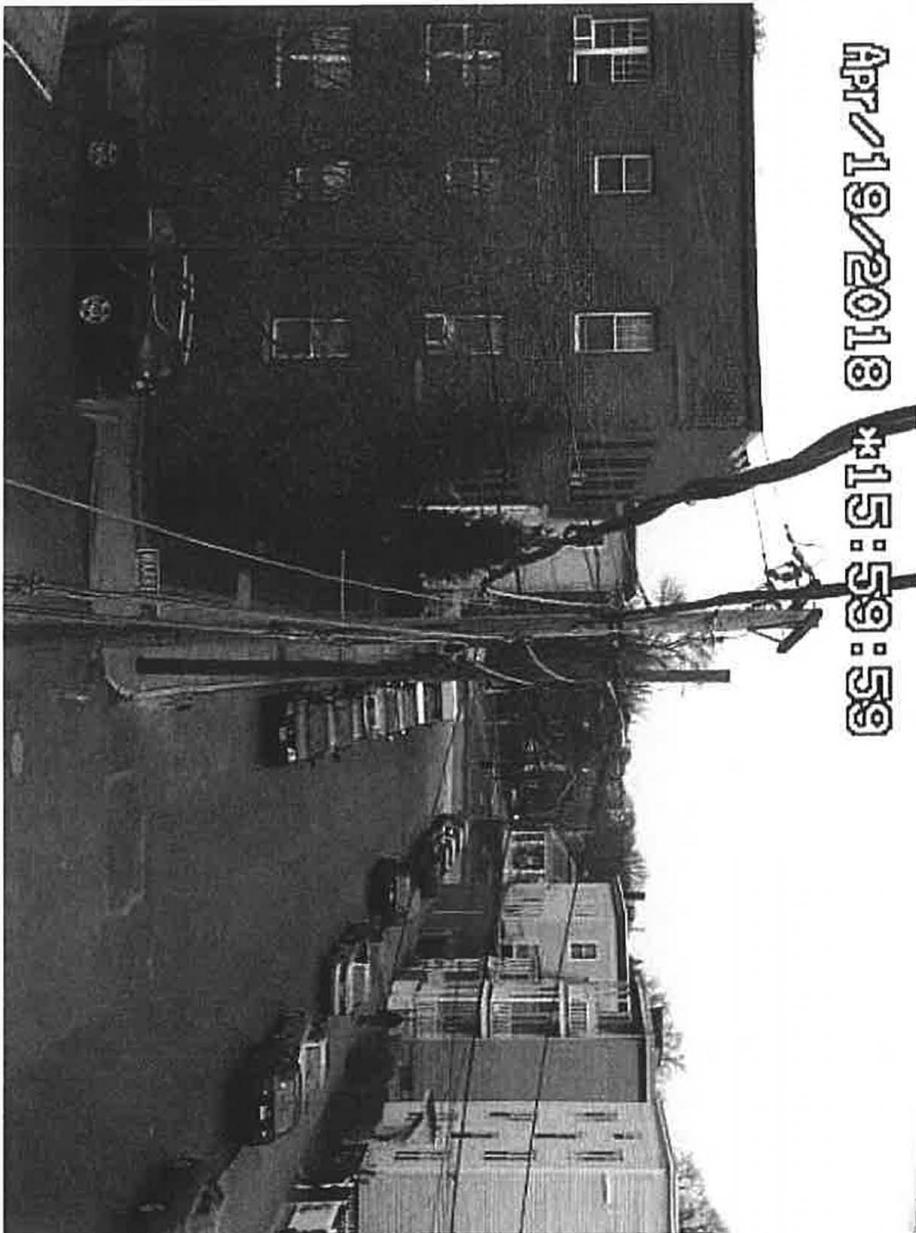
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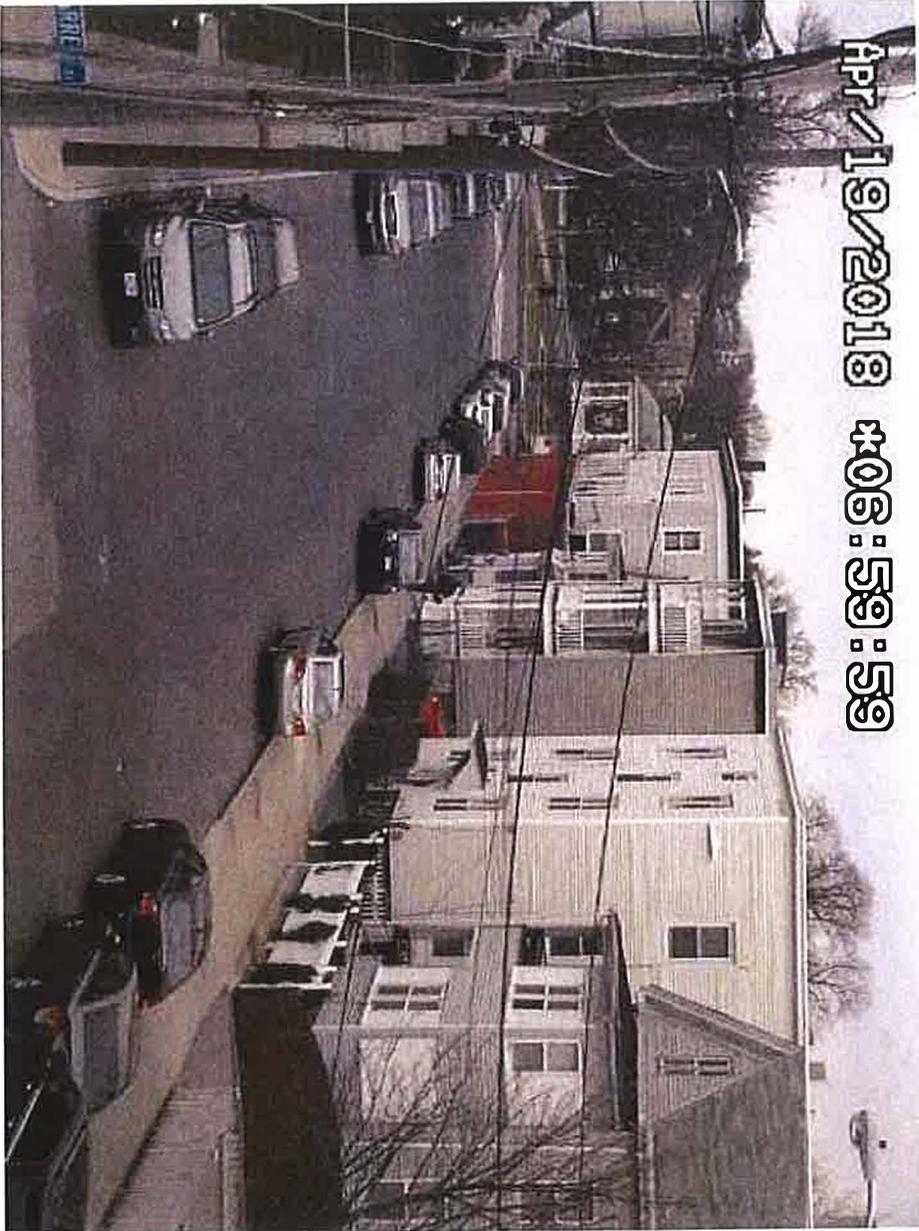




## **Exhibit 3**

APR/19/2018 \*15:59:59



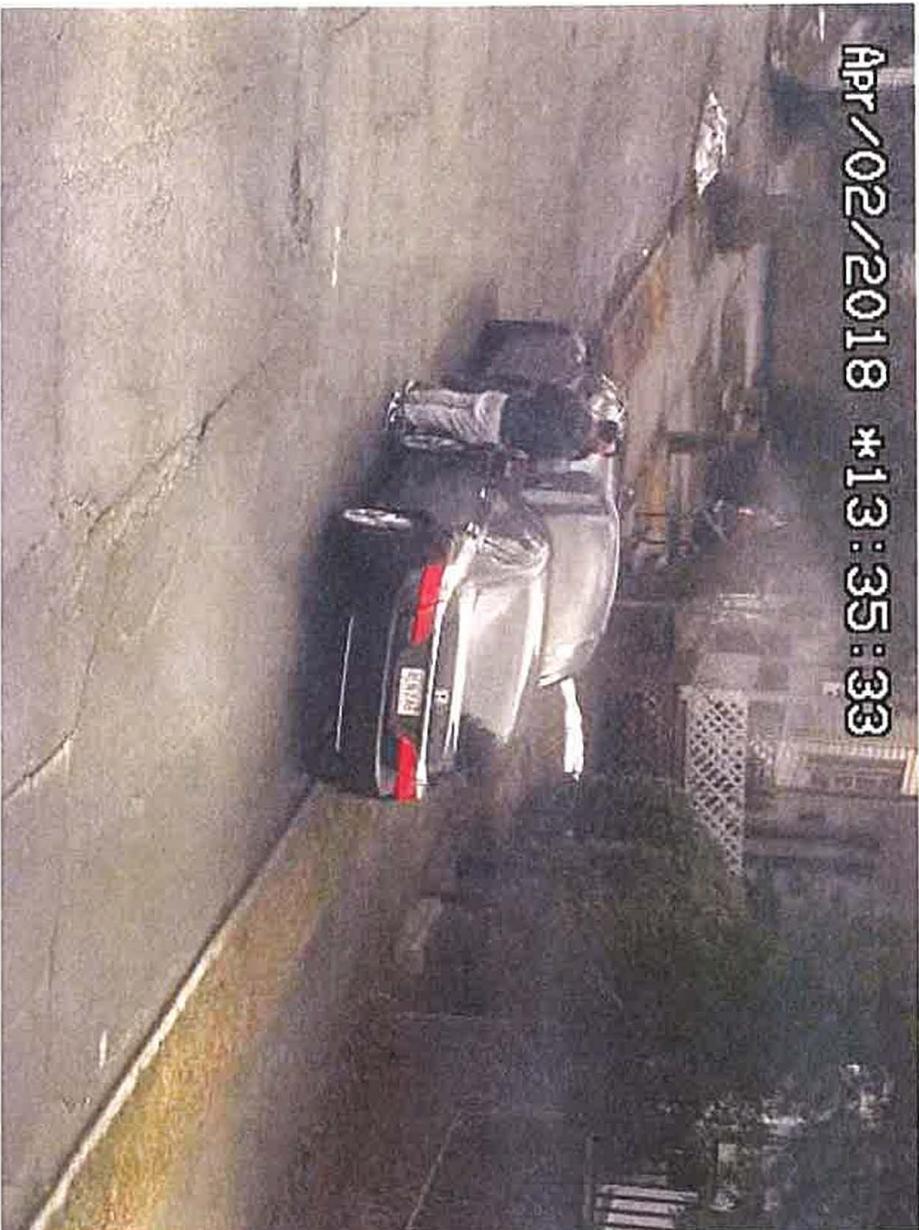


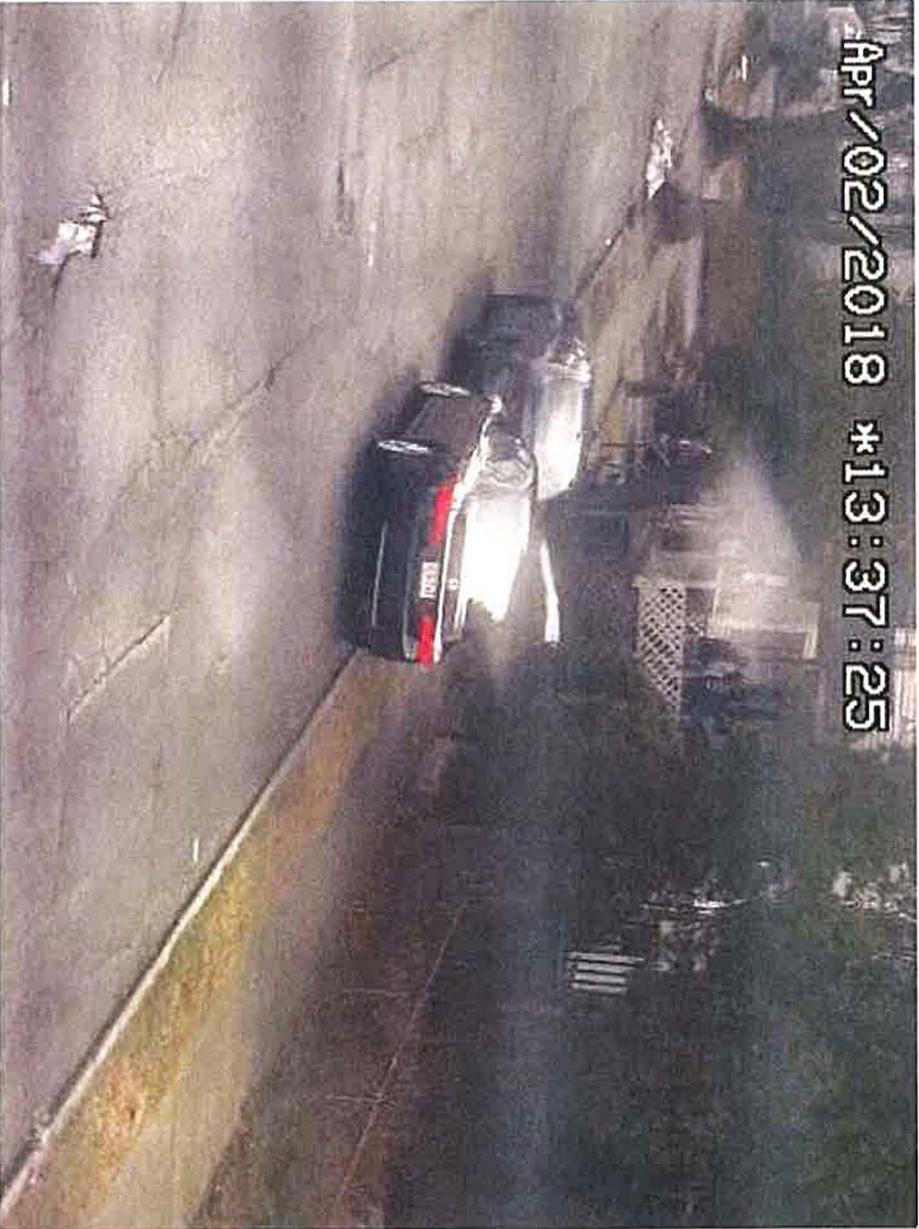
## Exhibit 4



## Exhibit 5

APR/02/2018 \*13:35:33





COMMONWEALTH OF MASSACHUSETTS

ESSEX COUNTY, ss

SUPERIOR COURT DEPT.  
DOCKET NOS. 18-540, 542, 543, 544, 592, 593, & 594

COMMONWEALTH

v.

NELSON MORA, GREGORY INUYAMA, RICHARD GRULLON-SANTOS,  
LYMBEL GUERRERO, RANDY SUAREZ,  
FRANTZ ADOLPHE, & AGGELIKI ILIOPOULOS

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STIPULATIONS RELATED TO DEFENDANTS' MOTIONS TO SUPPRESS  
POLE CAMERA EVIDENCE

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For purposes of the motions to suppress pole camera evidence filed and/or joined in by the defendants in the above-captioned matters, the Commonwealth and the defendants stipulate as follows:

1. As part of the investigation that led to the indictments in these cases, the Massachusetts State Police installed what are commonly known as "pole cameras" in public locations in order to conduct surveillance.
2. The pole cameras were installed in fixed locations in the area of the following addresses:
  - a. *68 Hillside Avenue, Lynn, MA*, which is the residence of defendant Nelson Mora. The Hillside Avenue camera afforded a view of a portion of the front of the house, as well as the street on which the house is situated and the sidewalk that runs in front of it. The pole camera footage for this location runs from December 6, 2017 at 11:43 a.m. through May 23, 2018 at 3:19 p.m. Mora was regularly seen on the footage from the Hillside Avenue camera. On a few occasions, defendants Inuyama, Adolphe, Guerrero, and Suarez and/or vehicles investigators knew to be operated by them were also seen on the footage from this location.

FILED  
IN THE SUPERIOR COURT  
FOR THE COUNTY OF ESSEX

OCT 21 2019

  
CLERK

- b. *8-10 Swampscott Avenue, Peabody, MA*, which is the residence of defendant Randy Suarez. The Swampscott Avenue camera afforded a view of the front of the residence, as well as a driveway in front of the house (partially obscured by a neighboring Dunkin' Donuts), part of a second driveway on the side of the house, and the street on which the house is situated. The pole camera footage for this location runs from March 23, 2018 at 12 p.m. through May 23, 2018 at 3:19 p.m. Suarez was regularly seen on the footage from the Swampscott Avenue camera. On a few occasions, Guerrero was also seen on the footage from this location.
- c. *Shepard Street, Lynn, MA*. Defendant Frantz Adolphe resides at 9 Shepard Street, though the Shepard Street camera was not focused on his residence or any other particular residence. The camera afforded a view down the length of Shepard Street, which included a partial view of the top of the driveway to Adolphe's residence. The pole camera footage for this location runs from April 4, 2018 at 8:48 a.m. through May 23, 2018 at 3:20 p.m. Mora and Adolphe were regularly seen on the footage from the Shepard Street camera. On at least one occasion, defendant Grullon-Santos was seen on the footage from this location.
- d. *7 Ruthven Terrace, Lynn, MA*, which is the residence of defendant Richard Grullon-Santos. The Ruthven Terrace camera afforded a partial view of the front of the house, which was largely obscured by a tree in a neighboring yard. The pole camera footage for this location runs from May 18, 2018 at 8:13 a.m. through May 23, 2018 at 3:20 p.m. On at least one occasion, Grullon-Santos was seen on the footage from the Ruthven Terrace camera.
- e. *9 South Elm Street, Lynn, MA*, which is the residence of Carlos Perez. Perez is not a charged defendant in this case. The pole camera footage for this location runs from May 9, 2018 at 7:35 a.m. through May 23, 2018 at 3:20 p.m.

3. Each of the cameras captured video but not audio.
4. While the cameras were operating, investigators could remotely view the video from a web-based browser in real time, as well as search and review previously recorded footage.
5. The cameras had zoom and angle movement capabilities, which could be operated remotely by investigators (in real time only). In some instances, the zoom function enabled investigators to read the license plate on a car. None of the pole cameras enabled investigators to see inside any residence. The cameras captured only publicly viewable areas and activity.
6. The cameras did not have any infrared or enhanced night vision capabilities.
7. All cameras recorded without limitation persons coming and going from the above-listed locations.
8. While the investigation was ongoing, the data from each pole camera was stored on a State Police server. After the cameras were turned off, the data was removed from the server and transferred onto hard drives for storage.

Respectfully submitted,  
For the Commonwealth,

MAURA HEALEY  
ATTORNEY GENERAL

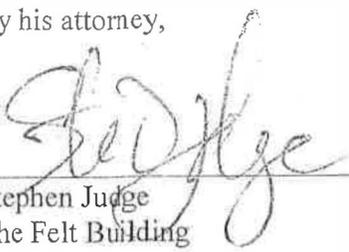


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RANDY SUAREZ

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Randy Suarez

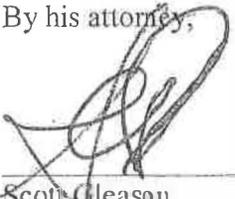
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Richard Grullon-Santos

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**COMMONWEALTH OF MASSACHUSETTS**

**ESSEX, ss.**

**SUPERIOR COURT  
CRIMINAL ACTION**

**NO. 2018-00540**

**2018-00542**

**2018-00543**

**2018-00544**

**2018-00592**

**2018-00593**

**2018-00594**

**COMMONWEALTH**

**vs.**

**NELSON MORA, ET AL.,**

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**MEMORANDUM AND DECISION ON  
DEFENDANTS' MOTIONS TO SUPPRESS EVIDENCE  
DERIVED FROM POLE CAMERAS**

**PROCEDURAL AND FACTUAL BACKGROUND**

Defendant Nelson Mora (“Mora”) is alleged in this case to be an organizer/leader of a large-scale illegal drug distribution operation based in Essex County. It is alleged that Mora was engaged in the illegal distribution of oxycodone, fentanyl, and cocaine. Defendants Gregory Inuyama (“Inuyama”), Frantz Adolphe (“Adolphe”), Randy Suarez, and Aggeliki Iliopoulos (“Iliopoulos”) are alleged to have been associated with Mora and involved to varying degrees in his drug distribution operation. Four other alleged participants have already pled guilty to

various drug offenses. [2018-00545, 00546, 00547, and 00548]. Defendant Erick Delrosario (“Delrosario”) is alleged to have been an oxycodone supplier for Mora. Lymbel Guerrero (“Guerrero”) and Richard Grullon-Santos (“Grullon-Santos”) are alleged to have been fentanyl suppliers for Mora.

This case arose out of a long-term investigation by the Office of the Attorney General of the Commonwealth of Massachusetts. The investigation spanned approximately seven months. State police investigators were assisted by investigators from DEA, Lynn Drug Task Force, and Beverly Police Department. In November 2017, the investigation was initiated with the assistance of a confidential informant (“CI”) who identified Mora as a large-scale drug distributor. At the time the CI did not know Mora’s true name or residential address, but was willing to introduce an undercover officer (“UCO”) for purposes of arranging controlled buys from Mora. Over time, the UCO made ten controlled buys of oxycodone and fentanyl from Mora.

On March 19, 2018, the court (Feeley, J.) issued the first of a series of wiretap warrants for a cell phone identified as used by Mora.<sup>1</sup> The intercepted calls assisted investigators in identifying associates/customers of Mora and their cell phone numbers. Continued warrants to intercept communications on the Mora phone, as

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<sup>1</sup>All warrants in this case were authorized and issued by the undersigned associate justice. This court (Feeley, J.) has not and will not adjudicate challenges to the validity of the various warrants in this case.

well as new intercept warrants for phones associated with Delrosario and Guerrero, were soon issued by the court, with continued authorization through the middle of May 2018.<sup>2</sup> Telephone (“ping”) and GPS warrants were also issued by the court during the active part of the investigation. On May 21, 2018, in conjunction with the arrests of defendants, the court issued search warrants for eight or nine different locations. Those locations included the residences of Mora, Adolphe, Inuyama, Grullon-Santos, Suarez, Guerrero, and Iliopoulos. Thirteen individuals were arrested. Execution of the various residential search warrants yielded almost 2,400 pills, more than a kilogram of heroin/fentanyl, seventy-five (75) grams of cocaine, and approximately \$415,000 in U.S. currency.

Before (and after) the issuance of the initial wiretap warrant, investigators installed “pole cameras” on various telephone/electrical poles in public locations near but not on the property of a number of defendants. The purpose was to conduct surveillance of residences, or in one instance a street that the investigation had disclosed was associated with one of more of the defendants and their unlawful activities. The pole cameras were installed without notice to any defendant, without trespassing on any defendants’ property, and without prior judicial authorization by

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<sup>2</sup>Defendants’ motions to suppress wiretap evidence were denied by the court (Lang, J.) on August 9, 2019.

means of a search warrant. The following stipulations were filed with the court:

2. The pole cameras were installed in fixed locations in the area of the following addresses:
  - a. 68 Hillside Avenue, Lynn, MA, which is the residence of defendant Nelson Mora. The Hillside Avenue camera afforded a view of a portion of the front of the house, as well as the street on which the house is situated and the sidewalk that run in front of it. The pole camera footage for this location runs from December 6, 2017 at 11:43 a.m. through May 23, 2018, at 3:19 p.m. Mora was regularly seen on the footage from the Hillside Avenue camera. On a few occasions, defendants Inuyama, Adolphe, Guerrero, and Suarez and /or vehicles investigators knew to be operated by them were also seen on the footage from this location.
  - b. 8-10 Swampscott Avenue, Peabody, Ma, which is the residence of defendant Randy Suarez. The Swampscott Avenue camera afforded a view of the front of the residence, as well as a driveway in front of the house (partially obscured by a neighboring Dunkin' Donuts), part of a second driveway on the side of the house, and the street on which the house is situated. The pole camera footage for this location runs from March 23, 2018 at 12 p.m. thorough May 23, 2018 at 3:19. Suarez was

regularly seen on the footage from the Swampscott Avenue camera. On a few occasions, Guerrero was also seen on the footage from this location.

- c. Shepard Street, Lynn, MA. Defendant Frantz Adolphe resides at 9 Shepard Street, though the Shepard Street camera was not focused on his residence or any other particular residence.<sup>3</sup> The camera afforded a view down the length of Shepard Street, which included a partial view of the top of the driveway to Adolphe's residence. The pole camera footage for this location runs from April 4, 2018 at 8:48 a.m. through May 23, 2018 at 3:20 p.m.. Mora and Adolphe were regularly seen on the footage from the Shepard Street camera. On at least one occasion, defendant Grullon-Santos was seen on the footage from this location.
- d. 7 Ruthven Terrace, Lynn, MA, which is the residence of defendant Richard Grullon-Santos. The Ruthven Terrace camera afforded a partial view of the front of the house, which was largely obscured by a tree in a neighboring yard. The pole camera footage for this location runs from May 18, 2018 at 8:13 a.m. through May 23, 2018 at 3:20 p.m. On at

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<sup>3</sup>Information from the CI at the beginning of the investigation included a report that Mora (identity then unknown) would use different meet locations in Lynn to conduct his business, but used Shepard Street in Lynn as one of his primary meet locations.

least one occasion, Grullon-Santos was seen on the footage from the Ruthven Terrace camera.

- e. 9 South Elm Street, Lynn, MA, which is the residence of Carlos Perez. Perez is not a charged defendant in this case.. The pole camera footage for this location runs from May 9, 2018 at 7:35 a.m. through May 23, 2018 at 3:20 p.m.
3. Each of the cameras captured video but not audio.
4. While the cameras were operating, investigators could remotely view the video from a web-based browser in real time, as well as search and review previously recorded footage.
5. The cameras had zoom and angle movement capabilities, which could be operated remotely by investigators (in real time only). In some instances, the zoom function enabled investigators to read the license plate on a car. None of the pole cameras enabled investigators to see inside any residence. The cameras captured only publicly viewable areas and activity.
6. The cameras did not have any infrared or enhanced night vision capabilities.
7. All cameras recorded without limitation persons coming and going from the above-listed locations.
8. While the investigation was ongoing, the data from each pole camera was

stored on a State Police server. After the cameras were turned off, the data was removed from the server and transferred onto hard drives for storage.

## DISCUSSION

### **1. The Other Defendants**

In total, five pole cameras were used, but only three cameras covered the fronts of residences occupied by named defendants. Those three defendants are Mora, Suarez, and Grullon-Santos. Mora and Suarez (and Guerrero) filed motions to suppress.<sup>4</sup> The remaining defendants were permitted by the court to join in those motions. However, the remaining defendants (including Guerrero) are in a different position than those defendants whose residences were subject to continuous pole camera coverage periods ranging from six days to five and one-half months. The camera outside Mora's residence was in place for five and one-half months. The camera outside Suarez's residence was in place for two months. The camera outside Grullon-Santos' residence was in place for six days. The camera on Shepard Street, which focused on the street and only covered the very top of Adolphe's driveway, was in place for one month and three weeks.

The defendants other than Mora, Suarez, and Grullon-Santos (the "other

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<sup>4</sup>The motions seek to exclude pole camera evidence at trial. They also seek to excise any pole camera references, or evidence derived therefrom, from search warrant affidavits and to thereafter challenge the warrants as lacking probable cause.

defendants”), concede that they stand on a different footing than Mora, Suarez, and Grullon-Santos, as their residences were never subject to continuous pole camera surveillance. The invasion of their privacy, and their expectation of privacy for those occasions when they were depicted on pole camera footage, was in this court’s view, de minimus.<sup>5</sup> Even if an occasional depiction on one of the residential pole cameras at one of the covered residences, or in the middle of Shepard Street, is sufficient to establish standing to contest the constitutionality of the pole cameras, an occasional depiction on pole camera footage at another’s residence or street is a far cry from continuous video surveillance coverage of one’s residence. The arguments advanced by Mora, Suarez, and Grullon-Santos focus primarily on the continuous and lengthy video surveillance of their residences and the information about the residents’ lives that may be reflected on the pole camera footage. The arguments advanced by Mora, Suarez, and Grullon-Santos also gain strength, as opposed to the other defendants, because the pole cameras focused on their homes, and homes are a protection at the heart of the fourth amendment and art.14.<sup>6</sup> The other defendants do not have the

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<sup>5</sup>In fact, two defendants joining in the suppression motions, Delrosario and Iliopoulos, are not depicted on any pole camera footage. Constitutional rights are personal, and Delrosario’s and Iliopoulos’ motions to suppress pole camera evidence are denied for lack of standing.

<sup>6</sup>The fourth amendment provides in part, “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” Art. 14 of the Declaration of Rights provides in part, “[e]very subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his

same invasion of privacy and expectation of privacy arguments as are advanced by Mora, Suarez, and Grullon-Santos. An occasional depiction in footage from pole cameras focused on residences of others (or a public street) does not provide a basis to raise the search issued raised by Mora, Suarez, and Grullon-Santos, who can at least argue that their subjective and objective expectations of privacy were infringed by the continuous, long-term pole camera surveillance of the front's of their residences. The motions to suppress filed or joined in by the other defendants will be denied without further discussion.

**2. *United States v. Moore-Bush*, 381 F. Supp. 3d 139 (D. Mass. 2019)**

On June 4, 2019, the Honorable William G. Young of the United States District Court for the District of Massachusetts issued his amended decision in *United States v. Moore-Bush*, 381 F. Supp. 3d 139 (D. Mass. 2019) (“*Moore-Bush*”). It was *Moore-Bush* that prompted the defendants’ challenges to the use of fixed, long-term surveillance pole cameras in this case.<sup>7</sup> Prior to *Moore-Bush*, federal case law had pretty much uniformly rejected challenges to pole camera surveillance of residences

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possessions.”

<sup>7</sup>The motions to suppress pole camera footage were all filed after *Moore-Bush*, and all referenced the recent decision from the United States District Court for the District of Massachusetts. Prior to *Moore-Bush*, defendants had challenged the wiretap warrants issued in this case, but had not challenged the use of surveillance pole cameras. Thus, it is helpful to start this court’s analysis with *Moore-Bush*, a non-binding decision with which this court disagrees.

for lack of a objectively reasonable expectation of privacy. [See multiple case cites in Commonwealth’s opposition memorandum, D. 25]. Rejecting First Circuit precedent in light of subsequent Supreme Court precedent undermining it, the *Moore-Bush* court considered the pole camera issue before it as a matter of first impression. *Id.* at 144.

The facts in *Moore-Bush* are remarkably similar to those before this court in that a long-term fixed surveillance pole camera was focused on a defendants’ driveway and part of the front of her house for eight months. The camera captured video, but not audio. The camera could zoom and angle to read license plates but could not peer inside windows. The camera recorded and produced a digitized searchable database. Over the government’s objection and arguments, *Moore-Bush* found the long-term pole camera surveillance of the defendant’s house and property to be a warrantless search, implicating the Fourth Amendment of the United States Constitution. *Id.* at 143. The exclusionary rule was applied because no exceptions to the warrant requirement were present, or argued to be present.

*Moore-Bush* recognized that the First Circuit previously approved the use of a pole camera in *United States v. Bucci*, 582 F. 3d 108, 116-117 (1<sup>st</sup> Cir. 2009), which reasoned that the legal principle that “[a]n individual does not have an expectation of privacy in items or places he exposes to the public” disposed of the matter. *Id.* at

144, quoting *Bucci*, 582 F.3d at 116-117. The *Moore-Bush* court felt free to decide the pole camera issue differently based on a change in federal law it derived from *Carpenter v. United States*, \_\_\_ U.S. \_\_\_, 138 S. Ct. 2006 (2018).<sup>8</sup> *Moore-Bush* read *Carpenter* “to cabin” – if not repudiate – that principle (from *Bucci*) with the following: “A person does not surrender all Fourth Amendment protection by venturing into the public sphere. To the contrary, ‘what [one] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.’”<sup>9</sup> *Id.* at 144, quoting *Carpenter*, 138 S. Ct. at 2217, quoting *Katz v. United States*, 389 U.S. 347, 351-351 (1967). Although *Moore-Bush* acknowledged that *Carpenter* does not discuss pole cameras, it found that *Carpenter*’s logic contradicted the First Circuit’s holding in *Bucci* regarding a lack of an objectively reasonable expectation of privacy. *Moore-Bush* found both a subjective expectation of privacy in their and their guests’ comings and goings from their house and an objectively reasonable expectation of privacy in their and their guests’ activities around the front of the

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<sup>8</sup>Defendants in *Moore-Bush* argued that the *Bucci* holding was limited to the camera used at that time, which had fewer capabilities than the more modern pole camera at issue in their case. *Moore-Bush* rejected their argument, and instead distinguished the *Bucci* holding by finding that *Carpenter* changed the law and required a different result.

<sup>9</sup>This court has no problem with the general statement in *Carpenter*, but it means little if anything outside the context of CSLI. Just as what one seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected, it also **may not** be constitutionally protected. *Carpenter* found CSLI to be constitutionally protected. It did not find pole camera surveillance focused on the front of a residence to be constitutionally protected.

house for a continuous eight-month period.

### 3. Analysis

As an initial matter, there is no dispute as to the constitutional protection sought by defendants. It falls under the expectation of privacy prong of federal fourth amendment constitutional jurisprudence. See *Katz*, 389 U.S. at 351. “When an individual ‘seeks to preserve something as private,’ and his expectation of privacy is ‘one that society is prepared to recognize as reasonable,’ we have held that official intrusion into that private sphere generally qualifies as a search and requires a warrant supported by probable cause.” *Carpenter*, 138 S. Ct. at 2213, quoting *Smith v. Maryland*, 442 U.S. 735, 740 (1979) (internal quotation marks and alterations omitted). See *Commonwealth v. Augustine*, 467 Mass. 230, 241-242 (2014), citing *Commonwealth v. Montanez*, 410 Mass. 290, 301 (1991) (same reasonable expectation of privacy standard under art. 14). However, “[t]he Fourth Amendment prohibits only unreasonable searches. The reasonableness of a search depends on the totality of the circumstances, including the nature and purpose of the search and the extent to which the search intrudes upon reasonable privacy expectations.” *Grady v. North Carolina*, 135 S. Ct. 1368 (2015), citing e.g., *Samson v. California*, 547 U.S. 843 (2006) (suspicionless search of parolee was reasonable); *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646 (1995) (random drug testing of student athletes was

reasonable).

Although defendants rely on *Carpenter* and *Moore-Bush*, they also rely on a series of Supreme Judicial Court cases that deal with fourth amendment and art. 14 jurisprudence and constrained law enforcement's use of developing and evolving areas of surveillance technology. See e.g. *Commonwealth v. Connolly*, 454 Mass. 808 (2009) (GPS tracking device placed on automobile); *Commonwealth v. Rousseau*, 465 Mass. 372 (2013) (GPS tracking device placed on automobile, passenger standing); *Commonwealth v. Augustine*, 467 Mass. 230 (2014) (CSLI); *Commonwealth v. Feliz*, 481 Mass. 689 (2019) (personal GPS device as an automatic condition of probation in sex offender cases); *Commonwealth v. Johnson*, 481 Mass. 710 (2019) (personal GPS device as a condition of probation in a non-sex offender case); *Commonwealth v. Almonor*, 482 Mass. 35 (2019) (cell phone providing police with real-time location of phone (i.e. "pinging"), and in essence, the real time location of its user); and *Commonwealth v. Fredericq*, 482 Mass. 70 (2019) (police real time tracking of a cellular telephone through which police obtained CSLI).

*Carpenter* itself involved law enforcement, without a warrant, obtaining historical CSLI records over a period of 127 days, specifically obtaining an average of 101 data points a day, that allegedly showed that defendant's phone was near four robbery locations at the time the robberies occurred. *Carpenter*, 138 S. Ct. at 2212-

2213. Defendants argue that based on *Carpenter*, *Moore-Bush*, and the above cited Supreme Judicial Court cases, among other cases, a trend has been established to extend constitutional protections against law enforcement surveillance techniques that have evolved through advancements in technology. The court does not disagree that recent jurisprudence shows such a trend. However, with the exception of *Moore-Bush*, the trend is limited to surveillance techniques that track a person's movements or location and is limited surveillance by or through cell phones (i.e. CSLI) and/or GPS devices. See *Carpenter*, 138 S. Ct. at 2216, 2219 (CSLI tracking partakes of many of the qualities of GPS monitoring – it is detailed, encyclopedic, and effortlessly compiled – accuracy of CSLI is rapidly approaching GPS-level precision); *United States v. Jones*, 565 U. S. 400, 430 (2012) (opinion of Alito, J.) (GPS monitoring of a vehicle tracks every movement a person makes in that vehicle); *Carpenter*, 138 S. Ct. at 2217 (CSLI over 127 days provides an all-encompassing record of the holder's whereabouts).

Other than *Moore-Bush*, which deviated from prior well-established federal law regarding pole cameras, no other “trend-establishing” cases cited by defendants involved use of pole cameras. The trend is not so much a function of any new technology, as it is a trend toward protecting against the use of new technology that tracks or is capable of tracking persons' movements and locations on a continuous

basis in and through public and non-public areas. There is a uniqueness that cell phones (i.e. CSLI) and GPS devices have brought to the forefront of law enforcement surveillance efforts that is lacking in pole camera surveillance. See *e.g.*, *Carpenter*, 138 S. Ct. at 2217 (noting unique nature of CSLI records) .

*Carpenter* begins by noting that there are 396 million cell phone service accounts in the United States, a nation of 326 million people. *Carpenter*, 138 S. Ct. at 2211. In *Carpenter*, the case involved “the Government's acquisition of wireless carrier cell-site records revealing the location of Carpenter's cell phone whenever it made or received calls.” *Id.* at 2215. The Court acknowledged: “This sort of digital data — personal location information maintained by a third party — does not fit neatly under existing precedents.”<sup>10</sup> *Id.* *Carpenter* required the Court “to confront a new phenomenon: the ability to chronicle a person's past movements through the record of his cell phone signals.” *Id.* at 2216. Cell phones -- nearly a “feature of human anatomy” – tracks nearly exactly the movements of its owner. *Id.* at 2218, quoting *Riley*, 134 S. Ct. at 2484. “[T]his **newfound tracking capacity** runs against

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<sup>10</sup>The uniqueness of cell phones in light of technological advancements was earlier recognized in a fourth amendment “search incident” case, *Riley v. California*, 573 U.S. \_\_\_, \_\_\_, 134 S. Ct. 2473, 2484 (2014). A “cell phone search would typically expose to the government far more than the most exhaustive search of a house.” *Id.* at 2491. As the *Carpenter* Court later explained: “while the general rule allowing warrantless searches incident to arrest ‘strikes the appropriate balance in the context of physical objects, neither of its rationales has much force with respect to’ the vast store of sensitive information on a cell phone.” *Carpenter*, 138 S. Ct. at 2214.

everyone.” *Id.* at 2218 (emphasis added).

This court disagrees with defendants and *Moore-Bush. Carpenter* and other CSLI and/or GPS cases have not established a trend outside their subject matters of CSLI or GPS monitoring. It is only those two (although in the future there may be more) technological surveillance advancements that accurately and precisely track persons’ movements and locations in areas accessible to and inaccessible to the public. This court concludes that *Carpenter, supra*, did not change the well-established case law rejecting challenges to pole camera surveillance based on the legal principle that “[a]n individual does not have an expectation of privacy in items or places he exposes to the public.” *Bucci*, 582 F.3d at 116-117. *Carpenter* specifically did not call into question “conventional surveillance techniques and tools, such as security cameras.” *Carpenter*, 138 S. Ct. at 2220.<sup>11</sup>

Fixed, even long-term pole camera surveillance covers a discrete area. Zoom ability does not expand the video coverage area. It is unclear if angling abilities

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<sup>11</sup>*Moore-Bush* focuses on the Supreme Court’s use of the term “security camera[]” and concludes that the Court was referencing private security cameras. This court focuses on the words “conventional surveillance techniques” and concludes that the Court was referencing law enforcement surveillance tools, such as pole cameras. Private security cameras (residential or commercial) and non-law enforcement government (e.g., cities, schools, public buildings, parks, etc.) installed video cameras are not conventional law enforcement surveillance techniques. Pole cameras are a long-standing conventional surveillance technique.

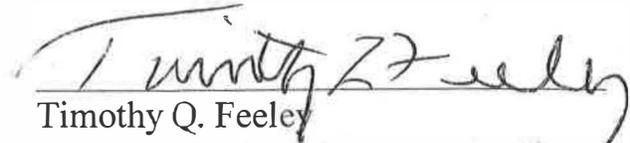
expand the video coverage area, but if it does, it does so in a de minimus manner.<sup>12</sup> The pole camera does not move from its fixed location. It does not track every movement and every location a person makes during the course of any given day. Pole cameras were installed in public locations and record only areas and activity that were exposed to the public. Footage depict times when an occupant of a covered residence leaves and returns to the residence. It depicts guests who might occasionally stop by the residence, or leave or return to the residence of the subject. It may identify a limited number of associates/friends, but associations not depicted at the front of the residence are unknown to law enforcement. The information obtained from pole cameras as to a subject's associations, lawful or unlawful, is far less complete than associational information obtained from call detail records of a subject's cell phone that can be obtained without a warrant. Pole camera surveillance does not follow its subjects into private residences, doctor's offices, hospitals, political headquarters, houses of worship, known drug houses, locations of unlawful drug activity or residences of known drug dealers, methadone clinics, brothels, locations of sexual liaisons, firearms businesses, and other potentially revealing locales.

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<sup>12</sup>Even *Moore-Bush* rejected the argument that new technological advancements to pole camera justified disregarding First Circuit law as announced in *Bucci, supra*.

**ORDER**

Defendants' motions to suppress, filed or joined in, are **DENIED** for reasons discussed above, as well as for the reasons advanced in the Commonwealth's opposition memorandum.

  
Timothy Q. Feeley  
Associate Justice of the Superior Court

November 4, 2019

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT  
NO. 2018 ESCR 0540

COMMONWEALTH

vs.

NELSON MORA

NOTICE OF APPEAL

FILED  
ESSEX SUPERIOR COURT  
2019 NOV 19 P 2:21

NOW comes the defendant in the above-entitled matter, by and through undersigned counsel, pursuant to M.R.A.P. 3(a) and Mass. R. Crim. P. Rule 15, and gives notice of his claim of appeal from the denial of his motion to suppress, entered on 11/04/2019, (Feeley, J.), and received by undersigned counsel at his office on or about November 7, 2019. Undersigned counsel also seeks leave to file his petition for interlocutory appeal in the Massachusetts Court of Appeals on a date certain, and, in any event, within 21 days of the filing of this Notice of Appeal.

Respectfully submitted,  
NELSON MORA, The Defendant,  
By:  
/s/ Stephen D. Judge  
Stephen D. Judge, His Attorney  
BBO# 563390  
Hemsey Judge, PC  
The Felt Building  
47 Federal Street  
Salem, MA 01070  
Phone: (978) 744-2800  
Fax: (978) 744-0024

#30

MS  
W.D.

CERTIFICATE OF SERVICE

I, Stephen D. Judge, Esquire, hereby certify that I have delivered copies of the within Notice Of Appeal, by delivering same, to Assistant Attorney General Gina Masotta, via electronic mail, at gina.masotta@state.ma.us, this 19th day of November, 2019.



STEPHEN D. JUDGE

FILED  
ESSEX SUPERIOR COURT  
2019 NOV 19 P 2 21

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT  
NO. 2018 ESCR 0540

COMMONWEALTH

vs.

NELSON MORA

ALLOWED

DEC 12 2019

DEC 12 2019

MOTION TO PERMIT LATE FILED APPLICATION FOR LEAVE TO  
TAKE INTERLOCUTORY APPEAL

Assoc. Justice

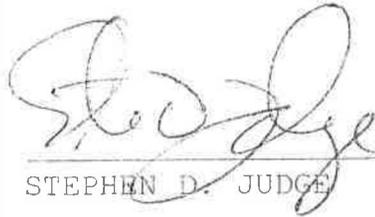
NOW come the defendants in the above-entitled matters, by and through undersigned counsel, pursuant to M.R.A.P. 3(a) and Mass. R. Crim. P. Rule 15, and do hereby request this Honorable Court permit the late filing of their Notice of Appeal and their Joint Application for Leave To Take Interlocutory Appeal in this matter. As reasons therefore, the defendants say that Mr. Mora timely filed his notice of appeal with respect to the denial of his motion to suppress, entered on 11/04/2019, (Feeley, J.), and received by undersigned counsel on or about November 7, 2019. In that timely filed Notice of Appeal, filed on November 19, 2019, counsel sought leave to file his full application by a date certain and by December 10, 2019. However, undersigned counsel inadvertently did not seek to have this Honorable Court endorse said

Notice of Appeal and permit the additional several days for filing of the application at the Supreme Judicial court. Nor did counsel seek, in the first instance a stay of trial court proceedings pending action by the SJC. Counsel now seeks to correct these omissions by having this Honorable Court either endorse his original Notice of Appeal or, in the Alternative allow this Motion to Permit Late filed Application for Interlocutory Appeal. Said Application was filed on December 10, 2019 at the SJC, docket number 2019-0531, and counsel herein seeks only to perfect the record and insure that proper appellate procedures have been followed.

Respectfully submitted,  
NELSON MORA, The Defendant,  
By:  
/s/ Stephen D. Judge  
Stephen D. Judge, His Attorney  
BBO# 563390  
Hemsey Judge, PC  
The Felt Building  
47 Federal Street  
Salem, MA 01070  
Phone: (978) 744-2800  
Fax: (978) 744-0024

CERTIFICATE OF SERVICE

I, Stephen D. Judge, Esquire, hereby certify that I have delivered copies of the within Notice Of Appeal, by delivering same, to Assistant Attorney General Gina Masotta, IN HAND, this 12th day of December, 2019.

  
STEPHEN D. JUDGE

Commonwealth of Massachusetts

Suffolk, SS.

Supreme Judicial Court  
No. SJ-2018-\_\_\_\_\_

Essex Superior Court  
Nos. 2018 ESCR 0540  
2018 ESCR 0594  
2018 ESCR 0592

ALLOWED

Commonwealth

v.

DEC 12 2019

Thomas Drechsler  
Assistant Justice

NELSON MORA, RANDY SUAREZ, LYMBEL GUERRERO, ET AL

DEFENDANTS' JOINT APPLICATION FOR LEAVE TO TAKE  
INTERLOCUTORY APPEAL PURSUANT TO G.L. CHAPTER 278  
SECTION 28E, MASS. R. CRIM. P. 15(a) (2) AND FOR  
STAY OF PROCEEDINGS IN THE TRIAL COURT

ISSUE PRESENTED

Whether, law enforcement officers in Massachusetts may install advanced video technology directly outside the residence of targeted individuals and at other public locations, again targeting those individuals, which technology is capable of: remote controlled angling and zoom functions, identification of license plates, faces, motor vehicles and all other activity and associations around said residence, constant around the clock recording, simultaneous remote recording of all data captured, creating a searchable database of said recordings, and permanent storage and access to said data through either a

cloud based server system or physical hard drives; and to do so with no judicial oversight or authorization but rather in their own discretion and at any time or place, and for any duration they desire.

RELEVANT PROCEDURAL HISTORY

On May 22, 2018, the defendants and others were arrested after an investigation spanning more than seven months. On August 30, 2018, numerous indictments were returned by an Essex County Grand Jury, charging these defendants, among others, with a number of violations of the controlled substances laws of Massachusetts including several trafficking indictments implicating lengthy mandatory minimum sentences for each of these defendants.

The Defendants herein contested the legality of the stated warrantless video surveillance by filing motions to suppress. (See Attached Exhibits 1) These motions sought suppression of the video surveillance and all of the unlawful fruits therefrom. The trial court then instructed counsel who sought to challenge said surveillance to submit supplemental briefs addressing the defendants' expectation of privacy interests with respect to the constant video monitoring they were subjected to. The within defendants filed supplemental briefs (See Attached Exhibits 2), the Commonwealth filed its opposition thereto (See Attached

Exhibit 3) and the matters were argued in the Essex Superior Court in a non-evidentiary hearing which included stipulations (See Attached Exhibit 4) related to the camera's placement, capabilities, duration of recording, and storage of data, among other relevant factual matters. The defendants were permitted to adopt and join in the filings and submissions of the several defendants and their counsel.

The Trial Court (Feeley, J.) subsequently denied the defendants' motions in a written decision entered on November 4, 2019. The Memorandum and Decision of the Court is appended hereto. (See attached Exhibit 5) The Defendants then filed a timely notice of appeal on November 19, 2019 and sought leave to file the within petition within 21 days of that Notice of Appeal or prior to December 10, 2019. (See attached Exhibit 6) This petition is the defendants' joint request to permit the taking of an interlocutory appeal on this question of first impression and significant importance to these defendants, the citizens of this Commonwealth and the law enforcement community alike.

#### BASIS FOR INTERLOCUTORY APPEAL

Expedited resolution of the instant issues would facilitate the interests of justice because judges, prosecutors, defense lawyers and especially, police officers need appropriate

decisional guidelines in innumerable instances which near the foul lines of unconstitutionality; a prompt decision here would greatly serve to clarify vital principles of law so recently examined in the appellate courts of the Commonwealth on closely related but distinct issues of fact; a prompt decision in this case would facilitate consistency in virtually all future similar cases.

Far more important than the general principles governing the appropriate use of interlocutory appellate review, is that in this particular case, the discovery includes a 6-terabyte hard drive which contains the video surveillance at issue. The surveillance sought to be suppressed herein permeates every aspect of this lengthy and complex case. That is, the surveillance finds its way into various applications for search warrants, warrantless stops, identifications and other matters of evidentiary significance. If these issues are not addressed now but rather in a post-conviction direct appeal, the courts, police officers and citizens of this Commonwealth will likely not have any guidance on such around the clock surveillance for more than three years.

In that case, considering that undersigned counsel alone presently have approximately a dozen cases amongst them involving this long-term stored video surveillance, and that the Commonwealth will likely utilize this technology more and more as its usefulness of such data and video collection and storage has been proven in these several investigations. As such, three years

hence, the government could realistically possess thousands and thousands of terabytes of surveillance of private citizens to be searched, accessed and utilized for whatever purpose they choose. Surely, a decision now, to better inform both the Commonwealth and its citizens as to the lawfulness of such surveillance and data collection is the more thoughtful and reasonable approach. The alternative, leaves trial courts in limbo and permits the Commonwealth to stockpile this questionable targeted surveillance without judicial oversight for the next few years at a minimum.

The defendants' potential conviction upon this complaint would also necessarily subject them to serve a substantial portion of a lengthy mandatory committed sentence; a favorable interlocutory appeal would prevent the Commonwealth from utilizing the fruits of this surveillance, would streamline much of the vast evidence in these cases, and likely result in resolutions short of trial thereby preserving judicial resources.

#### STATEMENT OF FACTS

The facts relevant to this constitutional inquiry are contained in a jointly adopted stipulation, related to the warrantless targeted around the clock video surveillance in this case, which was presented to the Trial Court for its consideration. (See Stipulation attached as exhibit 5)

SUMMARY ARGUMENT

The Commonwealth argues that Judge Young's decision in *Moore-Bush* does not control the determination to be made in this case. Citing the decisions lack of precedent value, it goes on, nevertheless, to cite a host of similarly positioned Federal District Court decisions.

What is lacking in the government's opposition is any substantial reference to the Massachusetts Declaration of Rights, particularly Article XIV jurisprudence.

Consider *Commonwealth v. Fredericq*, 482 Mass. 70, 76 (2019) where the police obtained subscriber information and toll records pursuant to a court order issued under 18 U.S.C. § 2703(d), but under art. 14 of the Massachusetts Declaration of Rights, the police may not use CSLI for more than six hours to track the location of a cellular telephone unless authorized by a search warrant based on probable cause. See *Commonwealth v. Estabrook*, 472 Mass. 852, 858 (2015); *Commonwealth v. Augustine*, 467 Mass. 230, 254-255 (2014), S.C., 470 Mass. 837 (2015) and 472 Mass. 448 (2015). See also *Carpenter v. United States*, --- U.S. ----, 138 S.Ct. 2206, 2220, 201 L.Ed.2d 507 (2018) (government acquisition of CSLI records constitutes "a search within the meaning of the Fourth Amendment [to the United States Constitution]").

*Commonwealth v. Rousseau*, 465 Mass. 372, 382 (2013), declared that "under art. 14, a person may reasonably expect not to be subjected to extended [global positioning system (GPS)] electronic surveillance by the government, targeted at his movements, without judicial oversight and a showing of probable cause." The Court held that a passenger with no possessory interest in a vehicle has standing to challenge the extended GPS surveillance of the vehicle as an invasion of his or her own reasonable expectation of privacy. Id. See *United States v. Jones*, 565 U.S. 400, 415-416, 132 S.Ct. 945, 181 L.Ed.2d 911 (2012) (Sotomayor, J., concurring) ("GPS monitoring generates a precise, comprehensive record of a person's public movements ... [and] evades the ordinary checks that constrain abusive law enforcement practices."); *Commonwealth v. Connolly*, 454 Mass. 808, 833 (2009) (Gants, J., concurring) ("the appropriate constitutional concern is not the protection of property but rather the protection of the reasonable expectation of privacy").

With respect to the Defendants' reasonable expectation of privacy, the same considerations exist as in the CSLI tracking of a cellular telephone; and implicates, as well, the same constitutional concerns as the GPS surveillance of the vehicle in *Rousseau*. See *Augustine*, 467 Mass. at 254. In *Augustine*, the Court noted that the type of prospective CSLI tracking that largely took

place there -- as opposed to historical CSLI tracking -- is even more closely akin to direct GPS surveillance. *Id.* at 254 n.36. The CSLI search was "targeted at [the defendant's] movements," much as the GPS search was targeted at the passenger defendant in *Rousseau*, and as in the present case where Mr. Suarez's movements and activities at his residence were constantly monitored and recorded over long periods of time around the clock.

The Commonwealth suggests that the technology involved in the present surveillance does not fall into the class of technological advancements for which methods of evaluation must be adopted for the purpose of Article XIV scrutiny. Much is made of the camera's stationary position and limited range of sight. Less, if anything, is made of the fact that conventional techniques of surveillance would require some person to be actually observing in real time that which is merely being recorded and maintained for subsequent review.

In *Commonwealth v. Johnson*, 481 Mass.710 (2019) such use of historical data was addressed: "General Laws c. 276, § 90, was enacted in 1880 and was last amended in 1938. G. L. c. 276, § 90, as amended through St. 1938, c. 174, § 3. See St. 1880, c. 129, §§ 1, 5. The state of technology at the time meant that the enacting Legislature had no opportunity to evaluate the privacy interests that may now be implicated by the recording and storing of long-

term historical GPS location data. See *Commonwealth v. Augustine*, 467 Mass. 230, 245 (2014), S.C., 472 Mass. 448 (2015) ("the digital age has altered dramatically the societal landscape"). See also *United States v. Jones*, 565 U.S. 400, 415, 132 S.Ct. 945, 181 L.Ed.2d 911 (2012) (Sotomayor, J., concurring) ("the same technological advances that have made possible [law enforcement's] nontrespassory surveillance techniques will ... shap[e] the evolution of societal privacy expectations"). As stated *supra*, we must reconsider older statutes in light of new technologies to ensure that privacy rights are not left at "the mercy of advancing technology." *Kyllo v. United States*, 533 U.S. 27, 35, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001). See *Olmstead v. United States*, 277 U.S. 438, 473, 48 S.Ct. 564, 72 L.Ed. 944 (1928) (Brandeis, J., dissenting); *Augustine, supra* at 250-251." *Commonwealth v. Johnson*, 481 Mass. 710, 716 (2019)

*Commonwealth v. Almonor*, 482 Mass. 35, 46-47 (2019) postures an analysis under Article XIV that is most compelling:

This extraordinarily powerful surveillance tool finds no analog in the traditional surveillance methods of law enforcement and therefore grants police unfettered access "to a category of information otherwise unknowable." *Carpenter, supra*. Indeed, prior to the advent of cell phones, law enforcement officials were generally required, by necessity, to patrol streets, stake out

homes, interview individuals, or knock on doors to locate persons of interest. See *United States v. Jones*, 565 U.S. 400, 429, 132 S.Ct. 945, 181 L.Ed.2d 911 (2012) (Alito, J., concurring) (recognizing that, "[i]n the pre-computer age," law enforcement surveillance tools were limited and thus "the greatest protections of privacy were neither constitutional nor statutory, but practical"); *id.* 415-416, 132 S.Ct. 945 (Sotomayor, J., concurring) ("because GPS monitoring is cheap ... and ... proceeds surreptitiously, it evades the ordinary checks that constrain abusive law enforcement practices: limited police resources and community hostility" [quotation and citation omitted] ). For this reason, society's expectation has been that law enforcement could not secretly and instantly identify a person's real-time physical location at will. See *id.* at 429, 132 S.Ct. 945 (Alito, J., concurring) (discussing societal expectations with respect to GPS tracking); *Connolly*, 454 Mass. at 835 (Gants, J., concurring) (noting that "[i]n the context of GPS," individuals reasonably expect that they will not be "contemporaneously monitored except through physical surveillance"); *Jones*, 168 A.3d at 712-713 (noting that society does not reasonably expect police to be able to instantly locate individuals).

Allowing law enforcement to immediately locate an individual whose whereabouts were previously unknown by compelling that

individual's cell phone to reveal its location contravenes that expectation. See *Jones*, 168 A.3d at 714-715 (noting law enforcement's "powerful person-locating capability that private actors do not have" invades reasonable expectations of privacy); *Earls*, 214 N.J. at 586, 70 A.3d 630 ("Using a cell phone to determine the location of its owner . . . involves a degree of intrusion that a reasonable person would not anticipate"). Although our society may have reasonably come to expect that the voluntary use of cell phones -- such as when making a phone call -- discloses cell phones' location information to service providers, see *Augustine*, 467 Mass. at 263, (Gants, J., dissenting), and that records of such calls may be maintained, our society would certainly not expect that the police could, or would, transform a cell phone into a real-time tracking device without judicial oversight. Cf. *Commonwealth v. Rousseau*, 465 Mass. 372, 382, 990 N.E.2d 543 (2013) ("a person may reasonably expect not to be subjected to extended GPS electronic surveillance by the government"); *Andrews*, 227 Md. App. at 394-395, 134 A.3d 324 ("cell phone users have an objectively reasonable expectation that their cell phones will not be used as real-time tracking devices through the direct and active interference of law enforcement"); *Earls*, *supra* at 586, 70 A.3d 630. The power of such unauthorized surveillance is far "too permeating" and too susceptible to being exercised arbitrarily by law enforcement -- precisely the type of

governmental conduct against which the framers sought to guard. See *Commonwealth v. Blood*, 400 Mass. 61, 71(1987) (noting that art. 14 was adopted to protect against "search policies ... which allowed officers of the crown to search, at their will, wherever they suspected [evidence of criminal activity] to be" [emphasis in original; citation omitted] ). See also *Carpenter*, 138 S.Ct. at 2214 ("The basic purpose of [the Fourth] Amendment ... is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials" [quotations and citation omitted] ). It would also require a cell phone user "to turn off the cell phone just to assure privacy from governmental intrusion." *Tracey v. State*, 152 So.3d 504, 523 (Fla. 2014).

To allow such conduct without judicial oversight would undoubtedly "shrink the realm of guaranteed privacy" under art. 14 and leave legitimate privacy rights at the "mercy of advancing technology." See *Kyllo*, 533 U.S. at 34, 35, 121 S.Ct. 2038. Accordingly, we conclude that by causing the defendant's cell phone to reveal its real-time location, the Commonwealth intruded on the defendant's reasonable expectation of privacy in the real-time location of his cell phone. The Commonwealth therefore conducted a search in the constitutional sense under art. 14.

No one expects, nor is it reasonable, to have every entrance and exit to one's private residence secretly surveilled and video

recorded for historical data review by law enforcement officers. This is Orwellian to the extreme. It is executive exercise of prerogative without a hint of oversight either by the legislature or the judiciary.

Every recent decision by the Supreme Judicial Court authored by various Justices, comprising a majority, has slashed such police prerogative by expanding expected privacy interests. Justice Lenk: Citizens have a "right to be left alone." Citing *Blood*, at 69. Chief Justice Gant: "Individuals reasonably expect that they will not be contemporaneously monitored except through physical surveillance." *Connolly*, at 835. Justice Gaziano: "In sum, when the government seeks to conduct a search that is more than minimally invasive, art. 14 requires an individualized determination of reasonableness." *Commonwealth v. Feliz*, 481 Mass. 689, 700 (2019)

The constitutional arguments put forth by the defendants are further contained in their supplemental submissions which brief the expectation of privacy issue from both a 4<sup>th</sup> Amendment and Article 14 perspective. (See defendants' briefs attached as exhibits 2)

#### Conclusion

Based on the authorities cited and the reasons aforesaid, the Defendants requests that this Court vacate the denial of the

Defendants Motion to Suppress (Feeley, J.) and enter an order allowing said motion, or, in the alternative, report the case to the full bench of this Honorable Court or to the Appeals Court for an interlocutory appeal. In the alternative, the Defendants ask for such other relief as they may be entitled.

Respectfully  
Submitted,  
NELSON MORA  
By His Attorney,

Respectfully  
Submitted,  
RANDY SUAREZ  
By His Attorney,

Respectfully  
Submitted,  
LYMBEL GUERRERO  
By His Attorney,

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Dated: December 09, 2019

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
NO. SJ-2019- 0531

SUPERIOR COURT DEPARTMENT  
ESSEX SUPERIOR COURT  
No. 1877CR00540  
1877CR00592  
1877CR00594

COMMONWEALTH

vs.

NELSON MORA & others<sup>1</sup>

ORDER

This matter came before the court, LENK, J., on the defendants' timely application<sup>2</sup> for leave to pursue an interlocutory appeal pursuant to Mass. R. Crim. P. 15(a)(2), of a Superior Court judge's denial of the defendants' motion to suppress data obtained from pole cameras that were placed on telephone and electric poles near the defendants' homes as part of a seven-month investigation of suspected drug trafficking.

Upon consideration, it is ORDERED that the application for leave to pursue an interlocutory appeal shall be, and hereby is, ALLOWED.

It is FURTHER ORDERED that the interlocutory appeal shall

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<sup>1</sup> Randy Suarez and Lymbel Guerrero.

<sup>2</sup> The application is deemed to be timely filed pursuant to Mass. R. Crim. P. 15(a)(2) and Commonwealth v. Jordan, 469 Mass. 134, 142-143 & nn.16,17, 148 (2014).

proceed in the Supreme Judicial Court and that the Criminal Clerk's Office of the ESSEX Superior Court shall assemble the record in docket Nos. 1877CR00540, 1877CR00592, and 1877CR00593 and shall transmit the record to the Clerk's Office of the Supreme Judicial Court, John Adams Courthouse, One Pemberton Square, Suite 1400, Boston, Massachusetts, 02108-1705.

It is FURTHER ORDERED that the matter shall be scheduled for argument in April, 2020. The parties shall consult with the Clerk of the Supreme Judicial Court for the Commonwealth regarding the designation of the parties and the service and filing of briefs; no extensions of time for filing are anticipated. The four other co-defendants whose motions to suppress were denied by the same Superior Court judge's order, two of whom have moved in the Superior Court to join the defendants' motion for leave to pursue an interlocutory appeal, but whose motions have not yet been acted upon in that court, may file motions to intervene in the full court. This matter shall proceed in all respects in conformance with the Massachusetts Rules of Appellate Procedure.

By the Court (Lenk, J.)

  
Assistant Clerk

Entered: January 29, 2020