

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT

19CR156

HAMPDEN COUNTY  
SUPERIOR COURT  
FILED

MAY 20 2022

*Heure & Gendron*  
CLERK OF COURTS

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COMMONWEALTH

vs.

JOSE DIAZ  
DEFENDANT

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**RULINGS OF LAW AND FINDINGS ON JURY WAIVED VERDICT**

**Introduction**

In a jury waived criminal trial, my responsibility is to apply the law to the facts to reach a true and just verdict based solely on the law and the facts I find. While it is not necessary that I make specific findings of fact, I shall now make such findings as are necessary to explain my reasoning.

My task is to untangle and unravel the knotted, conflicting testimony about a fast-moving, drunken barroom brawl involving multiple combatants, some of whom during their testimony before me—some seven years later—grappled to recall exactly what did or did not happen between the early morning hours of 1:00 and 3:00 o'clock on April 8, 2015, in a parking area near Nathan Bill's Bar & Restaurant, on Island Pond Road, Springfield. This brawl unexpectedly sprang out over resentment triggered by what one witness described as "obnoxiously loud" whistling at a woman—either a waitress or a patron's girlfriend. That whistling triggered such umbrage among attendees at a birthday celebration at Nathan Bill's which eventually spilled out into a nearby parking area, mushrooming into a violent exchange of criminal blows inflicted on four African American victims.

**Rulings of Law**

My rulings of law in a jury-waived trial the serve the same purpose as instructions to a jury, explaining the law I am bound to apply to this multifaceted

dispute. There is but one defendant before me, Jose Diaz, a dark-skinned Hispanic, whom a grand jury has indicted for participating in a joint venture to commit eight violent crimes.

So what does it mean to be a joint venturer in the commission of a crime? To obtain convictions against Mr. Diaz, the Commonwealth is not required to prove that Mr. Diaz himself personally struck any of the blows which caused injuries to the alleged victims Herman Paul Cumby, Jackie Ligon, his brother Jozelle Ligon and Michael Cintron.

To establish that Mr. Diaz is guilty of these crimes under a joint venture theory, the Commonwealth must prove to me two things beyond a reasonable doubt.

First, the Commonwealth must prove to me beyond a reasonable doubt that Mr. Diaz knowingly participated in some way in the commission of these crimes.

Second, the Commonwealth must prove to me beyond a reasonable doubt that Mr. Diaz did so with the intent required to commit the crimes. Such knowing participation by Mr. Diaz may take many forms. It may take the form of personally committing the acts that constitute the crimes, or in aiding or assisting another to commit those acts.

However, in this case, the Commonwealth does not claim—with one exception I will address—that Mr. Diaz personally committed any of the acts that constitute these crimes. Instead, the Commonwealth claims he committed the crimes by encouraging other persons to commit the crimes, or by helping in the commission of the crimes. An agreement to help commit a crime, if needed, does not need to be made through a formal or explicit written or oral advance plan or agreement; it is enough to prove that defendant Mr. Diaz, and at least one other person, consciously acted together before or during the crimes with the intent of making the crimes succeed.

Mr. Diaz's mere presence outside Nathan Bill's that evening and early morning is not enough to find him guilty of a joint venture. Presence alone does not establish Mr. Diaz's knowing participation in the crimes, even if Mr. Diaz knew about the intended crimes in advance but took no steps to prevent them.

To find Mr. Diaz guilty as a joint venturer with the others who struck one or all of these victims, there must be proof beyond a reasonable doubt that Mr. Diaz intentionally participated in some fashion in accomplishing the particular crimes, and that he had or shared the intent required to commit the crimes.

For me to find Mr. Diaz guilty under a joint venture theory, the Commonwealth must convince me beyond a reasonable doubt with evidence that he and others were participants in a joint venture because they were (1) present at the scene of the crime, (2) with knowledge that others intended to commit the crimes or intending themselves to commit the crime, and (3) by agreement were willing and available to help the others if necessary.

The defendant is presumed innocent of these charges. The presumption of innocence alone compels me to find Mr. Diaz not guilty unless I am satisfied beyond a reasonable doubt of his guilt after careful and impartial consideration of all the evidence. The burden of proof rests entirely on the Commonwealth—and that burden never shifts. Mr. Diaz did not have to explain or prove anything, including his own innocence. Under our system of law, a defendant has a perfect right to say to the Commonwealth, "You have the burden of proving your case against me beyond a reasonable doubt. I do not have to say a word." So, if after my careful and impartial consideration of all the evidence in the case, I have a reasonable doubt of Mr. Diaz's guilt, my verdict must be not guilty.

The Commonwealth must prove each of the essential elements of the crimes charged beyond a reasonable doubt. Now, that does not mean that every single fact about which I have heard testimony must be proven to that high standard. It is the essential elements of the crimes that must be proven to me beyond a reasonable doubt.

So what is proof beyond a reasonable doubt? The term is often used and probably pretty-well understood, though it is not easily defined. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt, for everything in the lives of human beings is open to some possible or imaginary doubt. A charge is proved beyond a reasonable doubt if, after I have compared and considered all the

evidence, I have in my mind an abiding conviction, to a moral certainty, that the charge is true.

When I refer to moral certainty, I mean the highest degree of certainty possible in matters relating to human affairs—based only on the evidence that has been put before me in this case. Every person is presumed to be innocent until proved guilty, and that the burden of proof is on the prosecutor. If I evaluate all the evidence and still have a reasonable doubt remaining, Mr. Diaz is entitled to the benefit of that doubt and must be acquitted. It is not enough for the Commonwealth to establish a probability, even a strong probability, that Mr. Diaz is more likely to be guilty than not guilty. That is not enough. Instead, the evidence must convince me of Mr. Diaz's guilt to a reasonable and moral certainty; a certainty that convinces my understanding and satisfies my reason and judgment as a judge sworn to act conscientiously on the evidence. This is what I mean by proof beyond a reasonable doubt.

#### **Findings of Fact**

First, the Commonwealth has proved to me beyond a reasonable doubt, that Herman Paul Cumby, Jackie Ligon, Jozelle Ligon and Michael Cintron were violently attacked outside of Nathan Bill's. But the Commonwealth has not identified beyond a reasonable doubt who personally struck those blows. The victims did not sufficiently identify any such person or persons with certainty beyond a reasonable doubt.

Yesterday in his closing argument, the prosecutor urged me to convict Mr. Diaz of personally assaulting and battering Michael Cintron with a baton, as well as participating in that crime as a joint venture with others. I find that the Commonwealth has not proved beyond a reasonable doubt that Mr. Diaz personally committed that crime, principally because Mr. Cintron's attempted identification of his attacker, merely as wearing a blue pullover, is not sufficient under our law to identify Mr. Diaz as Mr. Cintron's assailant. Neither Mr. Cintron, nor any witness to his attack, sufficiently identified Mr. Diaz, either before trial in a proper photo array, or in the courtroom, as his assailant. Nor in any of the hours of video surveillance, nor at the scene, is Mr. Diaz ever seen holding or possessing such a baton, or being within reach of a baton.

I find there is no credible evidence that Mr. Diaz, himself, and those men the Commonwealth alleges attacked these four victims, materially or substantially congregated, or conferred with each other about anything, either before, during or after the blows were struck. Mr. Diaz did not arrive at Nathan Bill's with these others. Neither did Mr. Diaz sit with them. Neither did Mr. Diaz attend or participate in their birthday celebration. He was not invited to the party. Neither did Mr. Diaz speak with them about anything, other than to say or waive hello. Neither did Mr. Diaz leave Nathan Bill's with any of them.

There is evidence that the loud whistling committed by one of the victims greatly offended and angered one particular partyer—whose birthday was being celebrated—because he believed, perhaps mistakenly, the loud whistling was directed at his girlfriend, disrespectfully. The anger and visible consternation within the partyers prompted the owner Mr. Sullivan to request the victims to leave. They complied without incident. But I heard no evidence that the loud whistling upset Mr. Diaz, or that Diaz—who was considerably older than the partyers, and was not invited to the party, nor did he sit with or even near the partyers—was even aware that the others were upset or angered. It may well be that Diaz was also angry, or that he learned that the partyers were offended or angry about the loud whistling. But I cannot say that is true because I heard no evidence of that. Again, the partyers and Mr. Diaz sat in completely different areas of the bar. And after the four victims left the bar, sometime thereafter, Mr. Diaz left the bar, alone on his own, before the partyers left the bar. I heard no credible evidence that either before or after Diaz left the bar, alone, Diaz conferred with any of the partyers .

I heard no credible evidence that before these birthday partyers left the bar, that any of them, either individually or collectively, before or after they were outside, congregated or conferred with Mr. Diaz in order to confront or attack these victims. There surely exists a theoretical possibility that these men intended to confront or start a fight with these four victims before or as they left the bar, well before the blows were struck. But I neither heard nor saw any credible evidence from which I say that is what happened. Even if that did happen, there is no credible evidence that

Mr. Diaz—who did not sit near or with the others, or leave with the others—was in on it.

Those at the birthday party were all highly intoxicated. Mr. Diaz, who was not invited, may not have been. No witness testified how much Mr. Diaz drank at the bar, or that he was impaired or intoxicated, highly or otherwise.

Moving to the violent altercations in the parking lot, I find that it is just as likely that whoever struck the first blows, and those that followed, did so impulsively, rashly, hastily, instinctively, and spontaneously in the parking area in response to unpredictable, provocative events occurring outside the bar.

As to the Commonwealth's accusation that Mr. Diaz carried a firearm that night, I credit the testimony and video evidence that he did indeed carry a firearm before, during and after the attacks. As to the testimony of one witness that Diaz withdrew his firearm from his holster, brandished and pointed it as he walked toward Murphy's, he may well have done so. But I do not reach that conclusion beyond a reasonable doubt, nor by a preponderance of the evidence. During the hours of surveillance video, there is not a single frame showing the pistol out of Diaz's holster. Diaz never credibly admitted to anyone—either at the scene or in the roughly seven years that followed—that he did so. The sole witness who testified that Diaz removed, brandished, and pointed his firearm at one of more of the victims did not come forward with that accusation until more than three years later—and then only after refusing to cooperate in the investigation, and after receiving immunity from prosecution, and after testifying unwillingly under the compulsion of a subpoena. Even were I to credit this lone witness's testimony that Diaz drew and pointed his firearm—which I do not—that same witness also testified the Diaz immediately returned his firearm to his holster when others instantly and sternly demanded that he do so. I find, therefore, beyond any doubt that Diaz's momentary handling of his firearm that evening was in no way part of any joint venture or plan to intimidate or harm these victims. The evidence is to the contrary because the other would-be joint venturers demanded that he re-holster it, which he did.

I further conclude that even if Mr. Diaz did pull and point his firearm, I cannot determine whether Diaz did or did not do that for a lawful purpose. Mr. Diaz is not charged with any firearm offenses. He was permitted to carry his firearm with him while off-duty. That being the case, he may have been justified in drawing the firearm. It makes no sense to say the Diaz was authorized to carry his firearm, but that he has not authorized to use it for a lawful purpose. Indeed, there is credible evidence that Diaz may have been struck and knocked out before or shortly after, or contemporaneously with, the attacks on one or all of these four victims. Given that circumstance, I cannot rule out, beyond a reasonable doubt, that at some point during this wild, spontaneous, drunken melee that if Diaz did draw his firearm, he did so out of a reasonable fear of attack, self-defense, or the defense of others.

### **Conclusions**

First, the Commonwealth has not proved to me beyond a reasonable doubt that Mr. Diaz knowingly participated with those who inflicted the blows in the commission of these indicted crimes; or that Diaz asked or encouraged the others to commit these indicted crimes; or that Diaz helped to plan the commission of these indicted crimes; or that he acted as a leader or a lookout; or that Diaz agreed to stand by at, or near, the scene of the crimes; or that he provided aid or assistance or encouragement to others in committing these crimes; or in helping anyone to escape after the crimes; or that he consciously acted together with the others, before, during or after the indicted crimes, with the intent of making these crimes succeed. It is left to suspicion or speculation—perhaps even reasonable suspicion or speculation—that he did so. But suspicion or speculation, however reasonable, is not enough to convict.

Second, the Commonwealth has not proved beyond a reasonable doubt that Mr. Diaz did so with the intent required to commit the crimes. It is left to suspicion or speculation—perhaps even reasonable suspicion or speculation—that he did so. But suspicion or speculation, however reasonable, is not enough to convict.

The Commonwealth has not proved to me, beyond a reasonable doubt, a joint venture ever existed between Mr. Diaz and others to commit the indicted offenses.

Madam Clerk, if you are prepared to do so, you may now report and record the verdicts.



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Edward J. McDonough Jr.  
Justice of the Superior Court

Dated: 5/20/22