

18-114 (130)

COMMONWEALTH OF MASSACHUSETTS
BERKSHIRE, ss **SUPERIOR COURT**
CR. NO. 18- 0112
18-0114

COMMONWEALTH OF MASSACHUSETTS

v

DAQUAN DOUGLAS and DEVIN NIEVES

ORDER ON DEFENDANTS' MOTION TO CONTINUE THE TRIAL

Immediately prior to empanelment, the defendants presented an oral motion to continue the trial based upon new information relating to the potential bias of an important Commonwealth witness. After a preliminary review of documents submitted in another criminal matter in the superior court, I discharged the venire and requested further information prior to acting on the motion.

By way of background, these two defendants together with two other co-defendants,¹ were charged with armed assault with the intent to murder, assault and battery by means of a dangerous weapon causing serious bodily injury, kidnapping while armed with a firearm causing serious bodily injury and a series of related charges. One of the victims in the case suffered massive, irreversible injuries from gunshots to the head. The assault occurred in August 2018 in the Town of Washington. Specifically, as alleged by the police, a shooting occurred at a remote location on Washington Mountain Road at a gathering of young adults; "a party in the woods." There were approximately 20-40 individuals at the location (October Mountain).

A trial in this case commenced in March 2020 and was in its third week when the courts throughout the Commonwealth were shut down due to COVID-19. In August 2021, this case was scheduled for trial commencing on November 8, 2021. The parties were to file any pretrial motion in October regarding any potential trial issue, however no motions were filed.

Consequently, it was stunning that such a motion was filed today derailing this trial. According to defense counsel, this morning he received a motion from a fellow attorney in an unrelated case that concerned Jacob Blanchard. Blanchard was scheduled to testify in the aborted case but was not reached. He, along with Cassidy Tatro and Nicholas Carnevale were in the truck that was attacked by group of men including the

¹ The other co-defendants are scheduled to be tried in May 2021.

defendants. Tatro, a defendant in a related case, was immunized in order to testify and offered scant evidence at the first trial. Carnevale was the individual shot and is now unable to testify. Blanchard is probably the most important Commonwealth witness in this case and his testimony is crucial to the Commonwealth.

In this context, the court learned today that Blanchard was involved in another criminal matter; a matter that occurred only two months after the October Mountain assault. This was a home invasion that occurred in Adams. Based on the material I have received today, the case against Blanchard is strong. The two victims in the house, Mailee Daignault, and Seth Griffin provided written statements describing in detail how four-five men entered their house in Adams. One assailant had a knife and another a gun. They were in the house for 10-15 minutes as Griffin was repeatedly assaulted. Some of the men were masked; however, Seth identified the individuals as Jake Galipeo, Jake Blanchard, Ande Keele and unknown individuals. Griffin knows Blanchard well as they use to be "good friends." Marijuana, cell phones and Griffin's wallet were stolen while the two victims were being held at gun and knife point.

The evidence reflects that shortly after this incident, Mailee Daignault contacted Jake Blanchard's mother who was an acquaintance from high school. When told of the home invasion, the mother indicated that "her son was using hard drugs, that she threw him out about three weeks ago and she was trying to get him into rehab to get help." She indicated that "Jake had done this three other times."

Another witness describes being with Blanchard and Galipeo after the event and both made statements regarding the assaults on Seth Griffin and the "adrenaline rush during the assault."

Finally, Blanchard was interviewed by the police and indicated that he was with a group that had a "beef" with Seth Griffin and others. Apparently, it was over stolen "weed" and a car's window being shot out. He describes how his group "went to Seth's house to confront them." Blanchard stated that "he knew that they had a BB gun on them when they went there." Upon arriving in the apartment, Blanchard indicated that he saw one of his group punch Seth in the mouth. H claim that he did not enter the house but remained outside. Blanchard indicated that he was not wearing a mask. The group left the house with marijuana according to Blanchard.

In September 2020, the prosecutor in the home invasion case, Andrew Giarolo, sent a letter to Joshua Hochberg, counsel to one of the assailants in the home invasion case, explaining why there was no indictment against Blanchard. He asserted that the police believe that Blanchard left the scene before any criminal activity occurred and "there was little likelihood that [the victim] would not have recognized Blanchard, even if he was wearing a half-mask."² No indictments were sought for the same reasons. He adds that "[n]o promises, rewards or inducements were made to Blanchard to get him to cooperate with the investigation involving your client." This letter was sent on September

² The reasons are inconsistent with what Blanchard told the police and the second reasons is also incomprehensible.

4, 2020 and copies were indicated as being sent to defense counsel in the October Mountain case.

The evidence is substantial that Blanchard got a pass on the home invasion case because of his involvement in the October Mountain case. Blanchard puts himself at the scene of the assault with hostile motives. He describes the nature of the assaults both to the police and a friend. He is identified by one of the victims, a former good friend as being involved in the assault. He leaves the premises only after several items were stolen. Simply stated, cases with far less evidence have resulted in convictions.³

The Commonwealth is certainly free to make deals with criminals to secure convictions in other cases; however, such deals must be honestly disclosed. The disclosure by ADA Giarolo in the home invasion case is hardly what I would call an appropriate disclosure in the October Mountain case. What is critical in the October Mountain case is that the defendants are timely informed that a discretionary decision was made not to prosecute Blanchard for home invasion. If the Commonwealth claims there was “no deal,” it must provide defense counsel with the complete file to allow them to challenge that assertion. In this case that assertion would be easily overcome. This has all the indicia of attempting “to slip one by.” The jury is entitled to know all the evidence that linked Blanchard with the home invasion in evaluating whether a “deal” was made in order to assessing his credibility.

The only notice provided to defense counsel regarding Blanchard’s home invasion incident is a copy of a letter related to a different case. What is surprising is that not a single one of the four attorneys listed as being copied with the letter has addresses this issue. Either they did not receive the letter or were simply unaware of its significance given its incidental nature.

Given the Due Process concerns, this is hardly consistent with the disclosure requirements regarding exculpatory evidence. One would expect the prosecutor involved in the October Mountain case to not only send the letter but also to provide counsel with all documents supporting its position. Due process requires that “the government disclose to a criminal defendant favorable evidence in its possession that could materially aid the defense against the pending charges.” *Commonwealth v. Daniels*, 445 Mass. 392, 401 (2005). “The *Brady* obligation comprehends evidence which provides some significant aid to the defendant’s case, whether it furnishes corroboration of the defendant’s story, calls into question a material, although not indispensable, element of the prosecution’s version of the events, or challenges the credibility of a key prosecution witness.” *Commonwealth v. Healy*, 438 Mass. 672, 679 (2003). (emphasis added). The law in this area is very clear. A criminal defendant has the constitutional right to cross-examine a prosecution witness to show that the witness is biased and is entitled to all of the factual basis for the bias. *Commonwealth v. Tam Bui*, 419 Mass. 392, 400 (1995).

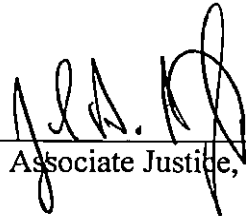
³ If nothing else, Blanchard by his own admissions, appears to be a classic joint-venturer; being available to help the assailants if needed.

Accordingly, the defendants' motion for a continuance is ALLOWED. The cases will be tried commencing on March 14, 2022. It should be noted that this lapse has caused a substantial waste of court and jury resources, has inconvenienced a number of potential witnesses, has deprived the defendants of their day in court and caused untold distress to the victims.

The Commonwealth is required to provide to all defense counsel in the October Mountain case a complete file regarding the home invasion case on or before December 3, 2021. A status conference in the Douglas and Nieves trial will be held on December 16, 2020 at 2:00 in court.

SO ORDERED

11/8/21
Date


Associate Justice, Superior Court

ENTERED THE COMMONWEALTH OF MASSACHUSETTS BERKSHIRE S.S. SUPERIOR COURT NOV 08 2021 