

COMMONWEALTH

V.

WALLY JACQUES SIMON

COMMONWEALTH'S STATEMENT OF THE CASE

Now comes the Commonwealth and offers the following Statement of the Case. This Statement of the Case is not intended to constitute a bill of particulars, nor does it recite all of the facts known to the Commonwealth relative to this matter.

Bryan Barbaro has known the defendant, Wally Jacques Simon, for over five years. The two men became friends after meeting at Mike's Gym in Medford. Both men were members and would periodically hang out with one another.

At some point, several years after having become friends, Bryan introduced the defendant to his brother, Christopher Barbaro. As a result of that introduction Christopher Barbaro began buying marijuana from the defendant. Christopher purchased marijuana from the

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defendant pounds at a time, paying two thousand to three thousand dollars per pound. These transactions took place in Christopher's apartment approximately every three weeks, or when Christopher's supply was getting low. When Christopher needed a new supply, he would call the

defendant and make arrangements concerning the pending transaction.

At approximately 12:30 AM on October 24, 2007, Brian Barbaro called 911. Mr. Barbaro told a dispatcher for the Winchester Police Department that he and his brother, Christopher Barbaro, had been shot. While pleading for help, Bryan stated that he had been shot by "Wally from the Gym."

The dwelling at 70 Irving Street, Winchester is a triple-decker. When police arrived they entered the common stairwell for the building and immediately noticed money lying on the stairs and blood stains on the wall of the stairwell. Police made their way to the second floor where they found that the door to the apartment had been kicked in. Officers entered the second floor apartment and found Christopher Barbaro lying unconscious on the floor suffering from a gun shot to his head. Christopher was transported to Lahey Hospital for treatment, where he died from his injuries later that morning. Police found Bryan

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Barbaro in his third floor apartment suffering from a gun shot to his chest. Bryan Barbaro was transported to Massachusetts General Hospital (M.G.H.) where he underwent surgery for his injuries.

At approximately 9:30AM investigators went to M.G.H. and met with Bryan Barbaro. Mr. Barbaro was presented a sequential photo array containing eight photographs. Bryan was shown the photographs one at a time. Bryan positively identified the defendant as the man that had shot him. Bryan then told investigators that he would tell the whole story later and the interview concluded.

On Saturday, October 27, 2007, investigators interviewed Bryan Barbaro a second time at M.G.H. During the interview Bryan Barbaro volunteered his long history with the defendant, including the drug sales between the defendant and his brother, Christopher.

Investigators learned that in the early morning hours of October 24, 2007 Bryan Barbaro was at home, in the living room of his third floor apartment watching television. At one point, Bryan heard a loud bang coming from the downstairs apartment occupied by his brother Christopher. Bryan was alarmed because his brother had suffered from seizures in the past and was concerned that he may have fallen; but did not initially go downstairs.

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Shortly thereafter, Bryan heard another loud bang. At this point, Bryan went down stairs to see if Christopher was alright. As he was descending the stairway Bryan yelled Christopher's name and asked if he was OK.

Bryan then entered the apartment and immediately found his brother Christopher lying on his stomach, his head at the entrance of his bedroom. Christopher was flailing his arms and making gurgling sounds. As Bryan moved closer to his brother he noticed a person attempting to slip past him and out the front door of the apartment. Bryan Barbaro immediately turned toward the person and found himself standing nose to nose with the defendant. Bryan immediately recognized his friend, the defendant. The defendant was wearing a black ski type jacket with the hood pulled up; however, his face was clearly visible.

The defendant made a gesture, telling Bryan to move to move away. At that point, Bryan Barbaro saw that the defendant was holding a small handgun. Bryan grabbed for the gun and the defendant responded by shooting Bryan in the chest. Bryan Barbaro then followed the defendant out the door and struggled with him all the way down the stairs and out the doorway of 70 Irving Street. Bryan observed the defendant to be holding what he believed to be a paper

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bag that began to rip as they struggled. Bryan explained that money began to fall as they descended the stairs.

After the defendant left 70 Irving Street, Bryan Barbaro was able to observe the defendant enter a dark colored SUV. The SUV was parked directly in front of the house facing the direction of Washington Street. When the defendant drove off, Bryan Barbaro returned to his apartment--where he knew that he could locate a phone--and called 911.

The defendant met with investigators on the morning of the murder. Counsel was present with the defendant during the interview. The defendant denied being present at 70 Irving Street during the murder and denied shooting either Bryan or Christopher Barbaro. The defendant further claimed an alibi, specifically naming the place and person with whom he had stayed during the time of the murder. Investigators followed up on the defendant's alibi and subsequently learned that the defendant had contacted one of his supposed alibi witnesses and told her to explain that, "if the police ask, tell them that I was with Delores in Lynn." Both alibi witnesses have since testified under oath that they were not with the defendant on the night of the murder.

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Last, at the time of the murder, the defendant faced indictments in the Middlesex Superior Court alleging multiple offenses related to firearms.¹ After the murder, investigators obtained warrants to search the defendant's residences' in Medford. Investigators uncovered multiple rounds of ammunition during the execution of those warrants. One round of that ammunition was a .25 caliber bullet located in the defendant's dresser drawer. The murder weapon in this case was a .25 caliber handgun.

Respectfully Submitted

For the Commonwealth,

GERARD T. LEONE, JR.
DISTRICT ATTORNEY

[Signature]
K. Nathaniel Teager
Assistant District Attorney
40 Thorndike Street
Cambridge, MA 02141

BBO: 630992
Tel: (617) 679-6500

¹ The docket number for the open case is MICR2007-00293. The matter remains open and is scheduled for trial in January 2008.