

COMMONWEALTH OF MASSACHUSETTS

v.

KYLE ABRANTES

THE COMMONWEALTH OF MASSACHUSETTS' MEMORANDUM OF LAW IN
OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS IDENTIFICATION

INTRODUCTION

The Commonwealth of Massachusetts respectfully urges this Court to deny Defendant Kyle Abrantes's ("Abrantes") motion to suppress his identification. On December 19, 2025, Abrantes was indicted on charges of assault, with intent to rob or steal, and stealing by confining or putting in fear. (Indict.) The Defendant has pleaded not guilty. (Plea.) On December 30, 2025, Abrantes moved to suppress an identification by Maris Branco. (Mot. Suppress.) The Commonwealth respectfully requests that the identification be admitted because it was not unnecessarily suggestive.

STATEMENT OF FACTS

The afternoon of December 2, 2025, at approximately 4:00 p.m. Abrantes and an accomplice assaulted Cobi Branco ("Cobi") in a quiet, residential neighborhood by using a Facebook Marketplace listing to lure Cobi (Hr'g Tr. 19:15–23). A Bristol County grand jury returned a true bill on December 19, 2025, charging Abrantes with Simple Assault with Intent to Rob or Steal, G.L. c. 265, § 20, and Stealing by Confining or Putting in Fear, G.L. c. 265, § 21. (Indict.) Abrantes entered a plea of not guilty on December 30, 2025. (Plea.) Abrantes now moves to suppress the eyewitness identification that places him at the scene of his own crime, contending the show-up procedure was impermissibly suggestive. (Mot. Suppress.)

The victim is sixteen-year-old Cobi: a teenage son, brother, Bishop Stang High School student, varsity soccer player, and youth YMCA coach, who sought to earn money to see the World Cup with his father by selling four special edition 2026 FIFA World Cup soccer balls that he and his father bought at \$200, selling for \$500 from their home at 408 Arnold Street (Hr’g Tr. 17:44–18:20). The special edition balls sold for double, \$1,000, on eBay. (Id. at 19:3–9.) A Facebook user responded to the post, arranged the meeting under the pretense that he was buying the ball as a gift, and showed up to the Branco’s home with an accomplice. (Id. at 19:15–23.) When Cobi opened the door, two men barged in, shoved him to the ground, grabbed the bag containing the soccer ball and snatched his wallet containing approximately \$300 in cash (id. at 19:27–29) and bolted (id. at 24:4–6). The assault left Cobi with a broken nose and two black eyes. (Id. at 19:42–45.) Although it happened fast, Cobi noticed one of the men wore a unique maroon hoodie with white print resembling the Portugal soccer team. (Id. at 19:37–40.)

Cobi’s thirteen-year-old sister Maris had just left her best friend Ellie Davis’s house directly opposite 408 Arnold Street at approximately 4:00 p.m. (Id. at 4:9.) As Maris stepped outside, she heard yelling and immediately saw two men running toward her from the middle of the Branco yard across the street. (Id. at 15:14, 15:26–27.) Cobi screamed at her to get back, warning that the men just attacked him. (Id. at 20:24–25.) Maris closely observed the two men, their clothes, and their getaway car: a beat-up dark green Honda sedan (id. at 6:7) parked on her side of the street, approximately twelve feet away (id. at 5:19–22), with a distinctive gold “H” on the back (id. at 6:20–21). Maris noted it was a “freezing” cold day, and hoodies alone seemed strange. (Id. at 7:19–20.)

Maris had a clear look at the taller man, who entered into the passenger seat on her side of the street. (Id. at 25:6–7.) As he opened the door, he turned toward Maris to throw the bag into

the back seat, and his maroon hoodie slipped back from his head, and the sun illuminated his face. (Id. at 8:43–45.) Maris saw that he was approximately six feet tall and wore a maroon hoodie with white print. (Id. at 8:18–20, 8:24, 8:29–30, 8:34, 8:38.)

Police received a call reporting the robbery and assault right about 4:15 p.m. (Id. at 23:30.) Detectives Katherine Dixon (“Detective Dixon”) and Kevin Bernard arrived at 408 Arnold Street about 4:30 p.m. (id. at 23:34–35), took detailed statements from Cobi and Maris, and based on these descriptions, issued an All Points Bulletin (APB) with the detailed descriptions; the detectives departed around 6:00 p.m. (id. at 25:25–32). At 7:45 p.m., two Patrol Officers, Cassidy and Skola—acting independently—spotted a precise match to the APB: dark green Honda with gold rims and a gold “H” and then detained the occupants at 87 Cottage Street. (Id. at 26:2–11.) The detectives identified the two men as Jacob Lopes and Abrantes. (Id. at 26:19–20.) Two hoodies sat in plain view in the back seat (id. at 26:25–32) exactly matching the descriptions both Cobi and Maris had given, and a bag containing a soccer ball (id. at 26:44–46) that Cobi later identified as the soccer ball taken from him (id. at 30:16–20).

Before Cobi or Maris saw the suspects, Detective Dixon read them the police department’s formal identification advisement: “I am accompanying you to look at someone. This person may or may not be the perpetrator, and the investigation will continue, whether or not an identification is made. It is just as important to free the innocent from suspicion as it is to identify offenders. I will be asking you to make a statement of certainty, in your own words, if you make an identification.” (Id. at 27:39–28:4.) Detective Dixon presented the suspects without handcuffs (id. at 29:12–14) and asked them to step out of the car wearing the hoodies recovered from the back seat of the dark green Honda (id. at 29:25–26). Detective Dixon engaged the marked cruiser’s overhead lights to help better see the men on a street that was “not particularly

well-lit.” (Id. at 29:1–2.) Cobi could not make an identification after the assault. (Id. at 28:21–26.)

Detective Dixon then asked Maris whether she recognized either man. (Id. at 28:28–29.) Maris initially thought she recognized the taller man in the maroon hoodie, testifying: “I thought I recognized the man in maroon hoodie. I recognized the hoodie he was wearing and he was about the same height as the man I saw getting into the front seat of the Honda.” (Id. at 13:20–23.) Maris asked Cobi to confirm the hoodie; Cobi confirmed the maroon hoodie with white print, identifying it as a Portugal national soccer team hoodie (id. at 13:27–28), which was the same one the attacker wore (id. at 20:15–19). Maris then confidently told Detective Dixon: “Yes, I’m pretty positive that’s the guy who was the passenger. It’s the same hoodie, he’s the same height, and he has the same hair.” (Id. at 13:32–34.) Maris positively identified Abrantes as the passenger who fled the Branco home. (Id.) That man is Abrantes, who lives around the corner from the Branco’s on Ocean Street (id. at 21:41–45) and stands six feet, two inches tall (id. at 22:3).

ARGUMENT

I. THE COURT SHOULD DENY THE MOTION TO SUPPRESS BECAUSE THE DEFENDANT FAILS TO PROVE THAT THE IDENTIFICATION WAS UNNECESSARILY SUGGESTIVE AND CONDUCTIVE TO IRREPARABLE MISTAKEN IDENTIFICATION.

The Court should deny Abrantes’s motion to suppress his identification under art. XII because Abrantes fails to prove by a preponderance of the evidence that the show-up identification was “unnecessarily suggestive and thus offensive to due process.” Commonwealth v. Botelho, 343 N.E.2d 876, 880 (Mass. 1976); Mass. Const. pt. 1, art. XII; Commonwealth v. Johnson, 650 N.E.2d 1257, 1261 (Mass. 1995); Commonwealth v. German, 134 N.E.3d 542, 545 (Mass. 2019); Mass. G. Evid. § 1112(b)(1)(A) (2025); Commonwealth v. Martinez, 857 N.E.2d 1096, 1099 (Mass. App. Ct. 2006). Abrantes carries the burden of proof in a motion to suppress.

Commonwealth v. Odware, 707 N.E.2d 347, 349 (Mass. 1999); Mass. G. Evid. § 1112(b)(1)(A) (2025); Patrick M. Noonan, Suppression Matters Under Massachusetts Law § 2-7 (2023-2024 ed. 2023). Courts scrutinize show-up identifications because of their inherently suggestive nature, but permit them when justified by legitimate law enforcement needs. Johnson, 650 N.E.2d at 1261.

For a motion to suppress showup identification, Abrantes must prove that under the totality of circumstances, police did not have “good reason” for conducting the showup, or that police used “special elements of unfairness” in the procedure. Johnson, 650 N.E.2d at 1260; Commonwealth v. Jacquard, 237 N.E.3d 1218, 1228 (Mass. App. Ct. 2024); Mass. G. Evid. § 1112(b)(1)(A) (2025).

Courts admit show-ups when police had good reason and the procedure did not include special elements of unfairness. Commonwealth v. Austin, 657 N.E.2d 458, 460–461 (Mass. 1995). The Court should deny Abrantes’s motion to suppress because the police had good reason and the procedure was free of special elements of unfairness. Jacquard, 237 N.E.3d at 1220.

A. COURTS ADMIT SHOWUP IDENTIFICATION EVIDENCE WHEN GOOD REASON EXISTS, UNLESS SPECIAL ELEMENTS ARE PRESENT.

Police had good reason to conduct the show-up because Abrantes committed a violent home invasion creating an ongoing public safety threat, officers acted within hours, and Maris’s detailed descriptions closely matched the defendant and his vehicle. Courts admit show-up identification evidence when the defendant fails to carry the burden of proving no good reason based on the “totality of the circumstances.” Austin, 657 N.E.2d at 460–61; Commonwealth v. Meas, 5 N.E.3d 864, 869 (Mass. 2014); Jacquard, 237 N.E.3d at 1220; Commonwealth v. Dew, 85 N.E.3d 22, 25 (Mass. 2017).

Courts find good reason where violent crimes create an ongoing threat to public safety. German, 134 N.E.3d at 545 (holding identification not unnecessarily suggestive because a dangerous thief threatened public safety); Austin, 657 N.E.2d at 461; Meas, 5 N.E.3d at 870; Jacquard, 237 N.E.3d at 1221; Dew, 85 N.E.3d at 25. In Austin, the court found good reason following a violent armed robbery because “whoever was involved could either escape altogether or strike again with possible injury to, or loss of, human life.” Austin, 657 N.E.2d at 461–63. In Jacquard, police conducted the show-up with good reason and the judge denied the motion to suppress because the defendant was targeting teenagers, and this heightened the concern for public safety. Jacquard, 237 N.E.3d at 1221. The court held that police had good reason for the showup because of ongoing public safety concerns. Id. at 1221.

Courts consistently recognize that police had good reason for a prompt show-up. Austin, 657 N.E.2d at 461; Meas, 5 N.E.3d at 869. When police conduct a show-up within hours of the crime, courts routinely find good reason. Dew, 85 N.E.3d at 27. In Martin, the court affirmed the defendant’s convictions through show-up for good reason where the defendant attacked and struck a fifteen-year-old girl in the face, whom she correctly identified at a show-up five days later. Commonwealth v. Martin, 850 N.E.2d 555, 557–558 (Mass. 2006); see Stovall v. Denno, 388 U.S. 293, 302 (1967).

Courts generally find good reason when the witness accurately describes the defendant with specific details pertaining to their clothing, looks, or vehicle—though the description need not be exactly correct. Commonwealth v. Amaral, 960 N.E.2d 902, 904 (Mass. App. Ct. 2012). In Amaral, the court held that the show-up was permissible for good reason because of the specific description of the defendant’s clothing, looks, or vehicle. Id. at 904–06.

Here, the instant facts present an even stronger case. Unlike Jacquard where the court still held good reason, Abrantes here did not merely direct harmful conduct toward a teenager—he committed a violent robbery against one that required Cobi to later “get his nose fixed” at the hospital. Jacquard, 237 N.E.3d at 1221; (Hr’g Tr. 10:28). Cobi, the victim, testified that he “screamed at her to get back. That these guys were dangerous. That they had attacked me.” (Id. at 20:23–25.) Cobi was “sixteen soon to be seventeen” (id. at 17:1), and Abrantes physically assaulted him. Abrantes committed a violent assault and remained at large near a teenager, constituting an ongoing public safety threat. As in Austin, where the court found good reason because the violent robber might “strike again,” Austin, 657 N.E.2d at 460, two men here “barged in, pushed me down, grabbed the bag with the soccer ball, grabbed my wallet, and ran out the front door” (Hr’g Tr. 19:27). The attack broke Cobi’s nose. (Id. at 19:41–44.) Maris testified that when Cobi returned home hours later, he had “two black eyes and bandages covering his face.” (Id. at 10:32–33.) Therefore, there is good reason to use show-up identification due to threats to public safety from a violent crime. Austin, 657 N.E.2d at 461; Jacquard, 237 N.E.3d at 1221.

A little over four hours elapsed between the crime at approximately 4:00 p.m. and the showup around 8:30 p.m. (Hr’g Tr. 14:39, 26:2, 26:15). Martin itself involved a showup five days after the crime—well beyond the few hours here—and the court still held there was good reason, confirming that courts impose no rigid temporal limit on the procedure. Martin, 850 N.E.2d at 558.

Although the defense will emphasize that Maris asked Cobi about the hoodie before making her final identification, this exchange demonstrates thoroughness, not suggestiveness—Maris had already recognized Abrantes independently based on height and

appearance before seeking confirmation of a single detail. When Detective Dixon looked inside the vehicle at 87 Cottage Street, she discovered in “relative plain view” two hoodies matching the witness descriptions in the back seat and a bag containing a soccer ball on the back-seat floor (Hr’g Tr. at 26:25–27, 26:40–42). Cobi later identified the bag and ball as taken from him. (Id. at 30:20.) This convergence—capturing Abrantes nearby with a precise vehicle match, matching physical descriptions, and the uniquely identifiable stolen item itself—establishes good reason. Meas, 5 N.E.3d at 870. The description need not be perfect in every detail; it is the totality of circumstances that controls. Amaral, 960 N.E.2d at 904. Under Amaral, police had good reason where the defendant’s weapon matched the witness’s description. Here the link is stronger: the stolen item—an exceedingly rare limited-edition World Cup soccer ball Cobi could only obtain through his father’s connections—was in Abrantes’s car. Maris identified Abrantes based on height, dark hair, and the maroon hoodie with white print (Hr’g Tr. 25:20). Maris’s minor inaccuracies do not render the identification unreliable. Martin, 850 N.E.2d at 558 (finding minor discrepancies go to weight, not admissibility).

The circumstances establish good reason for the Court to admit the show-up identification and deny the motion to suppress.

B. COURTS ADMIT SHOWUP IDENTIFICATIONS ABSENT SPECIAL ELEMENTS OF UNFAIRNESS.

The show-up procedure contained no special elements of unfairness because Detective Dixon administered proper instructions, each staging element served a legitimate purpose, and Maris identified Abrantes without prompting from any person present. Abrantes must show by a preponderance of the evidence that the showup identification was “unnecessarily suggestive and conducive to *irreparable* mistaken identification.” Commonwealth v. Moore, 109 N.E.3d 484, 500 (Mass. 2018) (emphasis added). Courts evaluate the totality of circumstances, asking

whether police introduced special elements of unfairness—that is, whether the police stacked the deck against the defendant. Botelho, 343 N.E.2d at 880; Stovall, 388 U.S. at 302; Commonwealth v. Thomas, 68 N.E.3d 1161, 1164 (Mass. 2017). Absent such police manipulation, showup identifications are admissible. Commonwealth v. Sylvia, 781 N.E.2d 46, 49 (Mass. App. Ct. 2003); Moore, 109 N.E.3d at 500; Commonwealth v. Leaster, 479 N.E.2d 124, 129 (Mass. 1985).

1. Instructions

Proper instructions to the witness can mitigate suggestiveness. German, 134 N.E.3d at 552; Mass. G. Evid. § 1112(b)(1)(A) (2025); Commonwealth v. Travis, 180 N.E.3d 1023 (Mass. App. Ct. 2022). Courts routinely recognize that verbatim reading of witness instructions is not required to eliminate any special elements of unfairness. Id. The court held that there were no special elements of unfairness even though the witnesses did not understand the instructions. Id. at 1030. In Travis, the witnesses did not fully understand the English language—one witness speaking Spanish and one speaking Portuguese—when the police read them partial instructions for the witness showup identifications. Id. Therefore, a showup identification without fully understood instructions was not unnecessarily suggestive. Id. The lack of comprehension of instructions goes to the weight of the showup identification—not admissibility. Id. at 1029; Thomas, 68 N.E.3d at 1164; Commonwealth v. Carter, 58 N.E.3d 318, 326 (Mass. 2016). In German, substantial compliance with the witness instructions was sufficient and the court held there were no special elements of unfairness. German, 134 N.E.3d at 552. The judge concluded that, “[t]he failure to promulgate or give such instructions . . . is not a fatal flaw.” Id.

Detective Dixon read thorough police advisement about identifications to Maris ahead of the showup identification that she understood (Hr’g Tr. 28:1–4). The instructions made it clear

that the suspect may or may not be the perpetrator. Id. Because Maris understood the instructions, suggestiveness was mitigated and there were no special elements of unfairness. Id.

2. Staging

Courts evaluate whether police staged the scene through use of police lights, the suspect's clothing, the location of the identification, or the presence of officers next to the suspect. Meas, 5 N.E.3d at 870; Dew, 85 N.E.3d at 25; Travis, 180 N.E.3d at 1029. In Meas, the court held there were no special elements of unfairness where police used overhead lights to illuminate the showup at night. Meas, 5 N.E.3d at 870, 873; see Commonwealth v. Phillips, 897 N.E.2d 31 (Mass. 2008); see also Commonwealth v. Drane, 712 N.E.2d 1162, 1163 (Mass. App. Ct. 1999) (holding that using a flashlight to illuminate the suspect was not unnecessarily suggestive). Police draped similar-looking clothing over the suspect for a showup identification in Dew, and the court found no special elements of unfairness. Dew, 85 N.E.3d at 28. In Travis, the court held there were no special elements of unfairness when the showup identification took place at the scene of the crime with a police officer present close to the suspect. Travis, 180 N.E.3d at 1031. The showup took place at the scene of the accident where the witness could see police present and the damaged car of the defendant. The court in Travis acknowledged there were no facts to indicate the police were attempting to stack the deck through special elements of unfairness, and therefore the showup identification was admissible. Id. at 1031.

Here, each element served a legitimate investigative purpose rather than police manipulation. Regarding lights: the showup of Maris took place around dusk where the diminishing light from the sun necessitated the lights from the police cars to improve the accuracy—the same circumstance upheld in Meas, 5 N.E.3d at 873. Detective Dixon testified that the cruiser's lights were engaged “so that Maris and Cobi could better see the two young men” because “it was late and the street is not particularly well-lit” (Hr'g Tr. 29:1–2). Regarding

clothing: officers apprehended the suspects in the specific, unique car described in the APB near the crime scene on an unusually cold day. Both suspects wore only t-shirts in the front seats, with hoodies matching exactly the description of what the witness saw at the time of the assault in the backseat. Detective Dixon testified that the police wanted the suspects “clothed exactly as the two men had been during the assault and robbery” (Hr’g Tr. 29:31–33). The police had the suspect wear the matching hoodie from the backseat of their own car—not supplied by the police—allowing the witness to evaluate the suspect as he appeared at the crime. This is stronger than Dew, where police draped a jacket on the defendant to match the witness description, and the court found no unfairness. Dew, 85 N.E.3d at 28. Regarding location and officer proximity: the police conducted the showup identification at the Branco home with an officer near the suspect, as in Travis, where the court found no unfairness. Travis, 180 N.E.3d at 1031. The safety demands of a just-committed violent crime necessitated the officer’s presence and proximity. Detective Dixon testified that officers remained outside their vehicles “as a precaution” because “neither Mr. Lopes or Mr. Abrantes had been handcuffed so both officers were out of their vehicle for containment and safety if needed” (Hr’g Tr. 29:12–14).

3. Identification in the Presence of Others

When a witness identifies the suspect with other persons present during the showup identification, it need not be a special element of unfairness. German, 134 N.E.3d at 558; Martin, 850 N.E.2d at 555. In Martin, the court held that there were no special elements of unfairness when a fifteen-year-old girl, with her father nearby, identified the suspect through a showup. Id. The court determined that the presence of her father did not unduly influence her decision. Id. at 557. In German, the court held that two witnesses identifying the suspect simultaneously was not a special element of unfairness. German, 134 N.E.3d at 558. The two witnesses in German experienced a violent crime, and therefore the police allowed the witnesses to identify the

suspect at the same time. Id. There were no special elements of unfairness because the violent crime supported the joint identification by the witnesses. Id.

Here, Maris identified the suspect with her family present. Like the fifteen-year-old victim in Martin, who identified her attacker with her father present and the court found no unfairness, Maris—thirteen years old, just having witnessed a violent assault against her brother—identified Abrantes without prompting from any person present. There is no evidence of prompting among observers; mere presence does not constitute suggestiveness. At most, this affects credibility—not admissibility. Thomas, 68 N.E.3d at 1164.

Because the showup was conducted with good reason and free of special elements of unfairness, Abrantes cannot meet his burden, and the motion to suppress should be denied.

CONCLUSION

For the foregoing reasons, the Commonwealth of Massachusetts respectfully asks this Court to deny Abrantes's motion to suppress because the show-up identification was supported by good reason and free of special elements of unfairness.