COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.SUPERIOR COURT DEPARTMENT

CRIMINAL DOCKET NO. 25-2435

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.) Abrantes has pleaded not guilty. (Plea.) On December 30, 2025, he moved to suppress an identification made by Maris Branco. (Mot. Suppress.) The identification should be admitted because it was not unnecessarily suggestive.

STATEMENT OF FACTS

On 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 after using a Facebook Marketplace listing to lure him to his own front door. (Hr'g Tr. 19:15-23.) A Bristol County grand jury returned a true bill on December 19, 2025, charging Abrantes with Assault with Intent to Rob or Steal, G.L. c. 265, section 20, and Stealing by Confining or Putting in Fear, G.L. c. 265, section 21. (Indict.) Abrantes entered a plea of not guilty on December 30, 2025. (Plea.) He now moves to suppress the eyewitness identification placing him at the scene, contending the show-up procedure was impermissibly suggestive. (Mot. Suppress.)

Cobi, then sixteen years old, had listed four special edition 2026 FIFA World Cup soccer balls for sale from his home at 408 Arnold Street. (Hr'g Tr. 17:1, 17:44-18:20.) A Facebook user responded to the post, arranged a meeting under the pretense that he was buying a ball as a gift, and arrived at the Brancos' 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, 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 that one of the men wore a distinctive maroon hoodie with white print resembling that of the Portugal soccer team. (Id. at 19:37-40.)

Cobi's thirteen-year-old sister Maris had just left a friend's house directly opposite 408 Arnold Street. (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 had 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 that it was a "freezing" cold day and that hoodies alone seemed strange. (Id. at 7:19-20.)

Maris had a clear look at the taller man, who entered 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, 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 at 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, issued an All Points Bulletin ("APB") based on those descriptions, and departed around 6:00 p.m. (id. at 25:25-32). At 7:45 p.m., Patrol Officers Cassidy and Skola, acting independently, spotted a precise match to the APB, a dark green Honda with gold rims and a gold "H," and 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), matching the descriptions Cobi and Maris had given, alongside a bag containing a soccer ball (id. at 26:44-46) that Cobi later identified as the ball taken from him (id. at 30:16-20). The show-up followed at approximately 8:30 p.m. (Id. at 14:39.)

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 so the witnesses could better see the men on a street that was "not particularly well-lit." (Id. at 29:1-2.) Cobi could not make an identification. (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), the same one the attacker wore (id. at 20:15-19). Maris then 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.) Abrantes lives around the corner from the Brancos 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 ABRANTES FAILS TO PROVE THAT THE IDENTIFICATION WAS UNNECESSARILY SUGGESTIVE AND CONDUCIVE TO IRREPARABLE MISTAKEN IDENTIFICATION.

The Court should deny the motion 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) (setting the standard governing suppression of a pretrial identification); Mass. Const. pt. 1, art. XII; Mass. G. Evid. section 1112(b)(1)(A) (2025). Abrantes carries the burden of proof on a motion to suppress. *Commonwealth v. Odware*, 707 N.E.2d 347, 349 (Mass. 1999) (placing the burden on the defendant). Courts disfavor one-on-one confrontations because of their inherently suggestive nature but have permitted them when conducted in the immediate aftermath of a crime and in exigent circumstances. *Commonwealth v. Johnson*, 650 N.E.2d 1257, 1259 (Mass. 1995).

To prevail, Abrantes must prove that under the totality of the circumstances police lacked "good reason" for conducting the show-up, *Commonwealth v. Austin*, 657 N.E.2d 458, 461 (Mass. 1995), or that the procedure the police used included "special elements of unfairness," *Commonwealth v. German*, 134 N.E.3d 542, 549-50 (Mass. 2019). Police had good reason here, and the procedure was free of special elements of unfairness.

A. Police had good reason to conduct the show-up.

Police had good reason because Abrantes committed a violent home invasion that created an ongoing threat to public safety, officers acted while the need to confirm or dispel suspicion was still live, and Maris's detailed descriptions closely matched the defendant and his vehicle.

Courts find good reason where a violent crime creates an ongoing threat to public safety. *Austin*, 657 N.E.2d at 462 (finding good reason after a violent armed robbery because the perpetrator could "escape altogether or strike again"); *German*, 134 N.E.3d at 549-50 (finding an identification not unnecessarily suggestive where a dangerous thief threatened public safety).

Courts likewise find good reason when police still need promptly to confirm or dispel an investigating officer's suspicion. *Commonwealth v. Dew*, 85 N.E.3d 22, 27 (Mass. 2017). And courts find good reason when the witness describes the defendant with specific detail as to clothing or appearance, even where the description is not exact in every particular. *Commonwealth v. Amaral*, 960 N.E.2d 902, 906 (Mass. App. Ct. 2012) (upholding a show-up where the witness gave a specific description of the defendant's clothing).

The facts here satisfy each ground. Abrantes directed violent conduct at a sixteen year old in his own home, beating him badly enough to require hospital treatment for a broken nose. (Hr'g Tr. 10:28, 19:41-44.) Cobi testified that he "screamed at her to get back. That these guys were dangerous. That they had attacked me." (Id. at 20:23-25.) Maris testified that when Cobi returned home hours later he had "two black eyes and bandages covering his face." (Id. at 10:32-33.) As in *Austin*, where the court found good reason because a violent robber might "strike again," Abrantes remained at large in the victims' own neighborhood, around the corner from their home. *Austin*, 657 N.E.2d at 462; (Hr'g Tr. 21:41-45).

Approximately four and a half hours elapsed between the crime at 4:00 p.m. and the show-up at approximately 8:30 p.m. (Hr'g Tr. 14:39, 26:2.) Throughout that interval the investigation remained active and unresolved: the APB was outstanding, no suspect had been located until 7:45 p.m., and the officers who stopped the green Honda needed promptly to confirm or dispel the suspicion that its occupants were the men described. *Dew*, 85 N.E.3d at 27. The show-up followed within forty-five minutes of the stop.

The descriptions were also unusually precise. When Detective Dixon looked inside the vehicle at 87 Cottage Street, she found in "relative plain view" two hoodies matching the witness descriptions and a bag containing a soccer ball. (Hr'g Tr. 26:25-27, 26:40-42.) Cobi later

identified the bag and ball as taken from him. (Id. at 30:20.) That convergence of a precise vehicle match, matching physical descriptions, and the stolen item itself establishes good reason. *Commonwealth v. Meas*, 5 N.E.3d 864, 872-73 (Mass. 2014). The link is stronger than in *Amaral*, where a matching knife sufficed: here the stolen item was a limited edition ball recovered from Abrantes's own car. *Amaral*, 960 N.E.2d at 904.

B. The procedure contained no special elements of unfairness.

The show-up 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. Abrantes must show by a preponderance of the evidence that the show-up was "unnecessarily suggestive and conducive to irreparable mistaken identification." *Commonwealth v. Moore*, 109 N.E.3d 484, 500 (Mass. 2018) (emphasizing that the risk of misidentification must be irreparable). The inquiry is whether the procedure the police used included special elements of unfairness. *German*, 134 N.E.3d at 549-50.

1. Instructions

Proper instructions mitigate suggestiveness, and verbatim recitation is not required. In *Commonwealth v. Travis*, 180 N.E.3d 1023, 1029-31 (Mass. App. Ct. 2022), witnesses who spoke Spanish and Portuguese received only partial instructions they did not fully understand, and the court nonetheless found no special elements of unfairness, holding that any failure of comprehension goes to weight rather than admissibility. Here Detective Dixon read Maris the department's full advisement, including that the person "may or may not be the perpetrator," and Maris understood it. (Hr'g Tr. 28:1-4.) Suggestiveness was mitigated.

2. Staging

Courts evaluate whether police staged the scene through the use of police lights, the suspect's clothing, the location of the identification, or the presence of officers beside the suspect. *Meas*, 5 N.E.3d at 870. Each element here served a legitimate investigative purpose.

As to lights, the show-up occurred after dark on a street Detective Dixon described as "not particularly well-lit," and the cruiser's overhead lights were engaged so that the witnesses "could better see the two young men." (Hr'g Tr. 29:1-2.) That is the circumstance upheld in *Meas*, where police used cruiser lights to illuminate a nighttime show-up. *Meas*, 5 N.E.3d at 870; see also *Commonwealth v. Drane*, 712 N.E.2d 1162, 1163 (Mass. App. Ct. 1999) (holding that using a flashlight to illuminate a suspect was not unnecessarily suggestive).

As to clothing, officers apprehended the suspects in the vehicle described in the APB on an unusually cold day, wearing only t-shirts, with hoodies matching the witnesses' descriptions in the back seat. Detective Dixon testified that police wanted the suspects "clothed exactly as the two men had been during the assault and robbery." (Hr'g Tr. 29:31-33.) The hoodies came from the suspects' own car, not from police. That is a lesser intervention than in *Dew*, where police draped a coat over the defendant's shoulders to match the witness description and the court found no basis to disturb the identification. *Dew*, 85 N.E.3d at 28.

As to location and officer proximity, officers remained outside their vehicles "as a precaution" because neither suspect had been handcuffed. (Hr'g Tr. 29:12-14.) *Travis* found no unfairness where a show-up took place at the scene with an officer standing near the suspect. *Travis*, 180 N.E.3d at 1031.

Abrantes may argue that the assault occurred in early December, when daylight is short, and that Maris therefore could not have seen his face clearly at 4:00 p.m. But Maris testified that the sun illuminated the man's face as he turned toward her from roughly twelve feet away, and

she described his height, hair, and clothing without hedging. (Hr'g Tr. 5:19-22, 8:43-45, 13:32-34.) Any residual question about the quality of the light bears on the weight of her testimony, not its admissibility. *Commonwealth v. Thomas*, 68 N.E.3d 1161, 1164 (Mass. 2017) (holding that concerns of this kind go to weight rather than admissibility).

3. Identification in the presence of others

The presence of a family member during a show-up does not itself render the procedure unfair. In *Commonwealth v. Martin*, 850 N.E.2d 555, 562 (Mass. 2006), the Supreme Judicial Court upheld a fifteen year old victim's show-up identification made while her father, who had himself flagged the suspect to police, stood a short distance away. The motion judge there considered whether the witness might be trying to please her father or might be afraid to contradict him, resolved that question on her assessment of the witness's conduct and demeanor, and concluded that the father's presence did not render the identification suggestive. The Court held it was bound by that credibility determination and agreed with the resulting conclusions of law. *Id.*

The same analysis controls here, and the record is in some respects stronger. Maris did not defer to Cobi. She recognized Abrantes independently by height, hair, and clothing before she sought confirmation of a single detail, and the detail Cobi confirmed was one he had already described to police hours earlier. (Hr'g Tr. 13:20-28, 19:37-40.) Cobi had just failed to make an identification himself, so his answer carried no suggestion as to which man to choose. Seeking corroboration of one detail demonstrates care, not suggestion. At most it bears on credibility, which is this Court's to assess. *Thomas*, 68 N.E.3d at 1164.

Because the show-up was conducted with good reason and free of special elements of unfairness, Abrantes cannot carry his burden.

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.