

**MASSACHUSETTS APPEALS COURT**

**UNOFFICIAL SUMMARIES OF THE CASES SCHEDULED FOR NOVEMBER 7, 2013  
AT MASSACHUSETTS SCHOOL OF LAW<sup>1</sup>**

Panel: Wolohojian, J. (presiding)  
Agnes, J.  
Sullivan, J.

**11-P-2169 Commonwealth v. Bonrad Sok**

The defendant was convicted by a Superior Court jury of second degree murder and sentenced to mandatory life imprisonment and has appealed both the conviction and the denial of a subsequent motion for an new trial. The charges arose from a gang related shooting. On appeal the defendant contends that (1)the trial judge forced the jury into hasty deliberations by announcing an intent to sequester, (2)he was prejudiced by the failure to include the presence of the defendant at bail hearings of two material Commonwealth witnesses and (3)the partial closure of the courtroom at sentencing mandate a new trial.

**13-P-434 Commonwealth v. Donald Frye**

The defendant was convicted by a District Court jury of assault and battery and sentenced to a split sentence to the house of correction with eighteen months to serve for an incident in which he punched and broke the nose of a woman with whom he had a relationship. At issue is whether(1) two defense witnesses who were permitted to invoke their Fifth Amendment privilege had actually waived that privilege by prior testimony, (2) a comment made by the judge to the defendant in the presence of the jury prejudiced him, (3) the judge erred in the jury instruction on the charge of assault and battery, (4) the defendant had a conflict of interest with defense counsel and (5)the defendant could assert the social worker/client privilege with regard to a witness who did not assert that privilege.

**13-P-682 Commonwealth v. Michael Bernard**

The Commonwealth appeals the allowance of a motion to suppress firearms and dangerous weapon charges by a District Court Judge who found that there was no probable cause for a motor vehicle stop. In the underlying incident, the defendant was stopped by a State Trooper for having a covering on his number plate and

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<sup>1</sup> These summaries are for educational purposes only and do not reflect the viewpoint of the court.

subsequently arrested for having a knife and a holstered firearm in his possession. At issue is both the construing of the violation on which the stop was premised and whether the judge's findings with regard to the trooper's testimony regarding observations of the plate were clearly erroneous.

**13-P-641 James Riley v. City of Lynn**

Plaintiff, a disabled former police officer, received a jury waived judgment from a Superior Court holding the defendant city liable for medical expenses deriving from the injury that forced him off of the police department. The judgment excluded dental expenses and the plaintiff appealed and here contends that the dental expenses should have been included in the judgment. The trial court found that the statute that governs medical expense recoveries by disabled former municipal employees does not include dental expenses and that the municipality does not provide dental coverage for any present or former employees. The appellant here argues that the original judgment holding the city liable used broad, all-inclusive language, pre-dated the statute, and, therefore, cannot be controlled by the statute.

**13-P-268 119 Foster Street, LLC v. RTW Realty, LLC**

The plaintiffs sued the defendant under a nuisance theory, claiming that paving by the defendant, an uphill abutter, caused flooding of their building. A Superior Court Judge, sitting jury waived, found that the defendant's paving did create the flooding. The court further found under the "unreasonable use" doctrine that the act of paving was not unreasonable but the manner in which it was done was. In addition to money damages, the court granted injunctive relief by requiring the defendant to install a French drain. The defendant has appealed and the issues are (1) whether the court's finding that the defendant caused the flooding is clearly erroneous on the record, (2) the "reasonable use" doctrine was properly construed and (3) whether the court erred in mandating a specific engineering solution, a French drain, to correct the nuisance.

**13-P-450 Irina Deresh & Arkady Degtiarov dba Boston Kennels v. Marcia Irwin & John Irwin**

Defendants appeal the judgment of a District Court Judge, subsequently affirmed by the Appellate Division of the District Court, which awarded the plaintiffs \$8608.05 in veterinarian bills for injuries suffered by their Bichon Frise when it was attacked by the defendant's unleashed German Shepard. The trial judge held that the measure of damages was the amount necessary

to restore the property, the dog, to its original state. The appellate court affirmed, applying the "special property" principle. Appellants contend that neither restoration nor special property principles apply and that damages should be limited to the fair market value of the animal. They further argue that, even if the court did apply the correct measure of damages, the plaintiffs had to and did not establish that the damages to restore the dog, the veterinary bills, were reasonable.

**13-P-527 Department of Children and Families v. A Mother & Another**

Grandmother appeals the denial of a motion to intervene by a Juvenile Court judge in an action in which the mother and father stipulated to their unfitness and relinquished permanent custody to DCF in 2007. The subject child lived with the Grandmother until removed by New Hampshire child services in 2011; almost a year later Grandmother filed the motion at issue in the Massachusetts Care and Protection action. Grandmother argues that the court erred in denying the motion by ignoring the best interest of the child, given her four-year caretaking bond with the child and the consequent foreclosure of any opportunity to adopt or have regular visitation with the child. DCF responds that there is no intervention as a matter of right in a child welfare case and that there was no abuse of discretion in denying a permissive intervention. Furthermore, the motion was untimely and would have been futile as no placement could be made with the grandmother as the home state child welfare agency had already investigated and ruled her out. Finally, allowing the motion would have prejudiced the child's right to permanency.