MDAO Policy for Responding to Discovery Requests Pursuant to *Commonwealth v. Long*

In Commonwealth v. Long, 485 Mass. 711, 717 (2020), the Supreme Judicial Court, recognizing that the discriminatory enforcement of traffic laws is "particularly toxic," endeavored to ensure that drivers who are subjected to racially-motivated traffic stops have a viable means to vindicate their rights. To that end, the Middlesex District Attorney's Office is committed to supporting the right of these defendants to marshal any relevant information to pursue this inquiry.

The purpose of a discovery request pursuant to Long is to allow a defendant to investigate whether an officer had a racially-motivated reason for stopping their motor vehicle. 485 Mass. at 725. If the discovery sought is relevant to the question of whether the stop was prompted by selective enforcement, the ADA should agree to provide the defendant with up to two (2) years[1] of the officer's traffic citations, police reports involving motor vehicle stops, and motor vehicle-based field interrogations and observations (FIOs). Id. The ADA should also agree to provide the defendant with information concerning departmental policies and procedures pertaining to the officer's unit, the officer's typical duties and responsibilities, and any bias-related training the officer has undergone. Id. Further, while data regarding other officers in the department is generally not germane to an inquiry under Long, when it is relevant and necessary to conduct further analysis to show that particular officer's stops diverges from the pattern of a stops from other members of the department or barracks (assigned to the same unit and shift) because of a racially-motivated bias, the ADA should agree to discovery of that information for the same period.

Additionally, this office is keenly aware of its Brady obligations to provide exculpatory information regarding the officer who initiated the stop that is within the possession of MDAO. Note, however, that a particular officer's internal affairs records and disciplinary information, as well as citizen's complaints regarding that officer, are generally not in the care, custody, or control of the prosecution team because the police departments are not the prosecution's agents for the purposes of their disciplinary matters. If a defendant is able to meet the relevancy threshold under Commonwealth v. Wanis, 426 Mass. 639 (1998), they should separately pursue this information through a Rule 17 motion. Likewise, information gleaned from CJIS queries is not in the care, custody, or control of the prosecution team and should also be separately pursued through a Rule 17 motion.

Once such relevant information is provided, if the defendant is then able to point to specific facts concerning the stop that raise a reasonable inference that the officer's decision to initiate the stop was motivated by race, they are entitled to a hearing in which the prosecution bears the burden of rebutting that inference. Id. at 724.

[1] G.L. c. 90, § 63 (the "hands-free" law), which requires the RMV to collect data from police departments regarding the race of any individual issued a citation, was made effective on February 23, 2020; thus, departments may only have data complied since that date.