COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
NOCR 03-00154

COMMONWEALTH

vs.

TIMOTHY WHITE

## MEMORANDUM AND ORDER ON DEFENDANT'S MOTION FOR NEW TRIAL

The defendant, Timothy White, has moved the court pursuant to Rule 30(b) of the Massachusetts Rules of Criminal Procedure for an order granting him a new trial. As grounds therefor, the defendant says his Sixth Amendment right to a public trial was violated; his Sixth Amendment right to confront witnesses was violated; his constitutional right to be present during a question from the deliberating jury was violated; and his Sixth Amendment right to effective assistance of counsel was violated. As a consequence of these constitutional errors and violations, the defendant argues that justice was not done.

## PROCEDURAL BACKGROUND

On April 18, 2003, the defendant was arraigned on indictment number NOCR 03-00154 which included twelve counts alleging various Controlled Substances Act violations and domestic assault charges. The case was first tried on May 3, 2005 and the jury was deadlocked as to five of the twelve counts. The mistried counts were: Trafficking in over 200 grams of Cocaine, Larceny over $250, Distribution of Marijuana, Conspiracy to Traffic in Class B Cocaine, and Conspiracy to Distribute Class D Marijuana. The second trial commenced on June 22, 2006 and the jury returned verdicts of guilty on three of the five counts, Trafficking in over

200 grams of Cocaine, Larceny over $250 and Conspiracy to Traffic in Class B Cocaine. On July 12, 2006, the defendant was sentenced to 15 years to 15 years and one day in state prison on the trafficking count, 4 years to 5 years on the larceny count, served concurrently with the trafficking sentence, and 10 years probation on the conspiracy count, to be served from and after the committed sentences.

The defendant filed a timely notice of appeal. The appeal has been stayed by the Appeals Court pending this court's consideration of this Motion for a New Trial.

## SUMMARY OF THE EVIDENCE

From January 2002 to January 2003, the defendant was one of six state troopers assigned to the Narcotics Inspection Unit ("NIU") of the Massachusetts State Police. The NIU was responsible for storing large quantities of drugs, participating in an "eradication of marijuana" program and destroying controlled substances that are no longer needed for court cases. The NIU has its own drug storage facility in Framingham called the "bunker." Access to the bunker was restricted to State Police and civilians from the Food and Drug Administration. Although the NIU had no written policies and procedures in place, the bunker had a sign-in and sign-out sheet and an eight-step process for entry to the bunker. Troopers who were assigned to the NIU were not authorized to keep drugs in their homes.

In 2001, the defendant's wife, Maura White, began using cocaine at the rate of once or twice per month. Her cocaine usage increased by the summer of 2002. Either she or her friend Nancy White would purchase cocaine from Robert Crisafulli and they would use the cocaine together with Crisafulli, and others. By August 2002, Maura White and her group would gather and use cocaine a couple of times during the week and on weekends.

Around August 2002, the defendant began to bring home quantities of cocaine and other drugs. In late summer of that year, Maura White observed that the defendant came home with a package labeled "Mass State Police Evidence" and "Chain of Custody." In September 2002, the defendant showed Maura White a 9-inch-long, rectangular block of cocaine with State Police Evidence paperwork attached to it. The paperwork stated that it was 37% pure. The defendant placed the block of cocaine in a safe inside his closet. On the next evening, the defendant sliced open the bag with a razor and Maura White and the defendant both ingested cocaine. The defendant then removed the cocaine from the evidence bag and replaced it with a mixture of flour, baby powder and water, then took the counterfeit substance back to work. He stored the cocaine in the safe in his bedroom closet. The defendant sold some of the cocaine and used the remainder with his wife.

Also in the same month, the defendant arrived home and found his wife and Nancy White doing cocaine. He brought out more cocaine from under the bed and explained to Nancy White that the cocaine was from a kilogram of cocaine that he took from the bunker. The defendant told Nancy White that he wished he knew someone who could sell it for them and that he could get as much cocaine as they needed. Nancy White suggested that Crisafulli could sell it.

Shortly thereafter, Nancy White gave samples of the cocaine to Crisafulli that the defendant had given to her. While at home with the samples, Maura White joined Crisafulli and Nancy White and they all ingested cocaine. Crisafulli had been using cocaine for years and was able to assess the quality of batches of cocaine.

The defendant and his wife went to Nancy White's house to meet Crisafulli. Prior to leaving for this meeting, the defendant retrieved several bags of cocaine from his basement and

packed them in a duffel bag. He took the duffel bag to Nancy White's house. During the meeting, Crisafulli saw three or four kilos of cocaine in the duffel bag. The defendant put some of the cocaine on a plate and they all used it. They discussed selling cocaine and making money from it. When the meeting ended, the defendant put the remaining cocaine back into the duffel bag, took it home and put it back in his basement.

The defendant had given a sample of cocaine to Crisafulli who showed the cocaine to his supplier. The supplier was not interested in selling it, even after receiving another "stronger" sample. Crisafulli then suggested to the defendant that they try selling the cocaine as ounces, rather than in kilos, at less than the current going rate. Following Crisafulli's suggestion, the defendant packaged some of the cocaine for sale by weighing it and putting it into plastic bags. This took place in the defendant's bedroom in the presence of Crisafulli and Maura White. Crisafulli observed that the defendant brought at least a kilo of cocaine up from the basement. After packaging the cocaine, the defendant gave several bags to Crisafulli who sold the bags of cocaine and split the money in thirds. He kept one-third for himself and gave the remaining two-thirds to the defendant and Maura White.

When the defendant was packaging the cocaine for sale, Crisafulli saw that the bag of cocaine had a State Police logo on it. He also noticed paperwork that was with the cocaine that came up from the basement. The defendant told Crisafulli that the cocaine was supposed to be burned at his job. The defendant initially used scales he brought home from the State Police barracks. He and Maura White also purchased scales and a large safe.

By November 2002, the defendant, Maura White, Nancy White and Crisafulli used cocaine on almost a daily basis. The defendant's marriage was also deteriorating. In early

December, Maura White called the Stoughton Police to their house and the defendant was asked to leave home. While the defendant was away for the weekend, Nancy White and her friend joined Maura White at the house and broke into the basement safe. Maura White took the cocaine, money and scales from the safe and placed them on top of the washing machine where she photographed the items. Some of the packages of cocaine had numbers on them and bore the words "State Police Evidence." Maura White put aside one bag of cocaine for Crisafulli to sell for her, then placed the rest of the cocaine in a green trash bag and put it at the bottom of the stairs in the basement.

The defendant returned home on Sunday evening and found the green trash bag with the cocaine, money and some of the floppy discs that contained the photos Maura White had taken. The defendant purchased another safe. The defendant continued to use cocaine at home with Nancy White, Crisafulli and another friend.

On Sunday, January 26, 2003, Maura White returned home with her children and called 911, but hung up. She then took her children to a friend's house, delivered a bag of cocaine to Crisafulli, then met him at a hotel where they did cocaine and spent the night. The next day, the defendant and Maura White had an argument and Maura White call 911. Responding to what was called a "domestic disturbance," the Stoughton Police arrived and spent more than one hour trying to get the defendant to surrender. When he finally came out of the house, he was arrested and taken to a local hospital. The police entered the defendant's house to search for weapons. They seized two service firearms and ammunition from a safe in the defendant's bedroom.

While at the hospital, the defendant was given a urine toxicology screen. According to the physician who ordered the test, the hospital had to determine if the defendant was cleared

medically to be evaluated by the psychiatric service facility. Medical clearance involved a physical examination and a series of diagnostic tests, including urine studies. The urine toxicology screen came back positive for cocaine and marijuana.

When Maura White returned to her house after the defendant's arrest, she found a note in the defendant's handwriting. It stated: "Maura, I didn't say anything. In my trunk brown paper bag marked Evidence. Remove and hide it in house. Sorry. I love you." Maura White took the brown paper bag out of the defendant's cruiser, then went to the basement and removed everything from the safe. She put the marijuana, cocaine and scales from the safe, and the brown paper bag into a suitcase. After placing the suitcase in a plastic trash bag, she threw the trash bag over the fence at the edge of her backyard.

After two days, Maura White took the suitcase from the backyard and took it with her to meet Crisafulli. Maura White and Crisafulli rented a U-Haul storage unit and put the suitcase inside it. On February 1, 2003, Maura White removed the suitcase from the storage unit and took it to Crisafulli. Crisafulli took the suitcase with the drugs home. Maura White later joined him at his home where she and Crisafulli began flushing the drugs down the toilet. They set aside around six ounce-bags of cocaine for Crisafulli to sell. Maura White shredded the evidence bags that had contained the cocaine.

Following the defendant's arrest, the State Police conducted an inventory of the drugs stored in the bunker. The last inventories of the bunker that had taken place in December 2000 and July 2002 found no discrepancies. The February 1 and 2, 2003 inventory determined that drugs and related paperwork, including the certificates of analysis and chain of custody documentation for at least two criminal cases, were missing from the bunker. Specifically, 479

grams of cocaine and related paperwork from the Rubin Hernandez case, and 272 grams of marijuana and 8 grams of hash and related paperwork from the Scott Siegal case, were absent. Later, the State Police determined that another 3989 grams of cocaine and related paperwork concerning the Lounge-Natarelli case were missing, and a large quantity of cocaine from the William Hernandez case had been "compromised," that is, the packaging had been opened.

The State Police obtained a search warrant and searched the defendant's house on February 8, 2003. Among the items found were: a safe under the basement stairs; a brown taped kilo-sized wrapper with a State Police Evidence bag and some kapac bags; a piece of paper that chemists usually put inside the kapac bag; a black plastic bag with a piece of brown matter in it; a straw found on top of the dresser in the master bedroom; five bags containing a "white powdery substance" found in a green plastic trash bag in the master bedroom; $6000.00 to $8000.00 in cash in a kitchen cabinet, which was not seized; hundreds of small ZipLoc bags. Other evidence offered at trial tied the brown wrapper to a particular case in which a kilo of cocaine was seized and was to have been destroyed in December 2002. The piece of paper bore numbers associated with another court case in which the drugs and related paperwork were missing from the bunker. The black plastic bag containing brown matter was tied to the hash wrapped in tinfoil that was seized in the Siegal case.

The police obtained two computers, a digital camera and a floppy disc containing 50 to 60 digital photographs from Maura White. The photographs contained images of the bags of cocaine and other items Maura White placed on the washing machine in her basement. Lab numbers were visible on come of the bags of cocaine in the photographs. There was evidence that certain lab numbers corresponded with certificates of analysis of drugs seized in certain court

cases. One lab number was from the Ospina-Gutirez/Villa-Osario case in which almost five kilos were seized. The records of the NIU show that this cocaine was destroyed on December 3, 2002. Other visible lab numbers were traced to the Lounge-Natarelli case and the William Hernandez case. When State Police officers searched the bunker and discovered the compromised cocaine from the William Hernandez case, they found that what appeared to be cocaine was actually starch.

On February 28, 2003, the State Police searched a storage unit that Crisafulli had rented. They found a box containing a one-gallon freezer bag containing what appeared to be cocaine. The substance tested positive for cocaine and weighted 678.11 grams. The police searched Crisafulli home on March 1, 2003 and seized a number of items: $2650.00 in cash; a bottle of Inositol; a small digital scale; a postal scale; and a shredder. The teeth of the shredder contained a residue of cocaine.

## I. RIGHT TO A PUBLIC TRIAL

The burden is on the defendant to prove any closure of the courtroom, and the burden is on the Commonwealth to prove any justification for any closure of the courtroom, as well as to prove any waiver by the defendant of his Sixth Amendment right to a public trial. See *Commonwealth v. Cohen*, 456 Mass. 94, 107 (2010). To address the "public trial"[1] issue, the court convened an evidentiary hearing which took place on June 17, 2011 and August 12, 2011 during which five witnesses testified. After review and consideration of all the credible evidence and reasonable inferences therefrom, the court finds and rules as follows:

[1] The "jury question" issue was also addressed in the evidentiary hearing.

## FINDINGS OF FACT

The defendant was represented by Attorney Robert George, an attorney with more than thirty years of experience. The trial began on June 22, 2006. That morning, the court first heard argument on motions in limine. This hearing and the first phase of the impanelment took place in a larger courtroom at Norfolk Superior Court. Individual voir dire and the trial were heard in Courtroom 25, and its lobby, on the second floor of the courthouse. During the motions in limine, members of the defendant's family were seated in the courtroom directly behind the defendant.

Attorney George moved for individual voir dire of the prospective jurors. He argued that the case was heavily covered by the media and an issue in the case "needs to be explored on a private basis" The court allowed the defendant's motion and proposed that the individual voir dire be conduct in the lobby so that the participants would not have to stand at the side bar for a lengthy period of time. Attorney George responded, "I accept your method, Your Honor." Attorney George assented, without reluctance, to holding individual voir dire in the lobby. As an experienced criminal litigator, Attorney George understood that by holding individual voir dire in the lobby, it would not occur in open court in the presence of the public. The motions continued through completion.

After a recess, the jury venire was brought into the courtroom. After the defendant was placed at the bar, the court welcomed the venire and asked for their patience because this portion of the impanelment "will take us some time." The court stated, "We are packed pretty tight." and offered to get seats for those who were standing. At no time did the court issue an order to close the courtroom.

Steven Baldner is the defendant's brother-in-law. He was present at the courthouse for the beginning of the defendant's trial on June 22, 2006, arriving before 9:00 a.m. It was his memory that the impanelment occurred on the second floor of the courthouse. When he arrived, he saw the defendant, Attorney George, Mark White and John McNeely. He entered the courtroom and stayed there until there was a break in the proceedings.

After the recess, as he attempted to re-enter, he was stopped by a court officer and prevented from entering. He did not argue with the court officer. The court officer did not single him out, but told the group of people he knew that they could not enter the courtroom. Baldner thought the courtroom was overcrowded. The court officer spoke further with Mark White while Baldner moved to sit on a bench. He did not hear their conversation. Baldner stayed outside the courtroom for one hour, then left. He did not return to court.

The defendant's cousin, John McNealy, arrived at the courthouse at 10:00 a.m. on June 22. He wanted to go into the courtroom but was not allowed to enter. Court officers were standing at the door. It was not always the same court officer, but there was always a "guard" at the door. He was in the building for the entire impanelment which took place during the first two days of trial. He remembers seeing family members who were also waiting in the hall. Although he did not ask anyone to let him in, he understood that he was not allowed in. He seems to recall seeing a sign on the door that said "No Entry to Court," or words to that effect, however, his recollection was unclear and could have been affected by his memory of the Cohen case.

Court Officer Larry Sullivan was the lobby officer assigned to the case. Prior to his retirement, he had been assigned to Norfolk Superior Court for 16 years. Although he had no

specific memory of the impanelment of this case, he did remember the defendant and that the trial was presided over by the undersigned judge.

In jury cases, one of Officer Sullivan's responsibilities is to make sure that there is space for the venire in the courtroom during impanelment. It was his practice to ask members of the public to step outside the courtroom until space is available. He spent most of his time inside the courtroom as the impanelment took place. To alert members of the public not to enter, he has placed a sign on the courtroom door using words such as, "Jury Selection in progress. Do Not Enter." He did not use a sign in every case and had no memory of whether he used one during the impanelment in this case.

Since the courtroom was so crowded that members of the venire were forced to stand, Officer Sullivan would have followed his practice of asking members of the public to leave the courtroom and keeping them from entering. Moreover, since he was stationed inside the courtroom for the most part, it is likely that he placed a sign on the door to keep members of the public for entering. Officer Sullivan acted pursuant to a policy of the trial court.

Although the court was aware that the courtroom was crowded with members of the venire, the court did not order members of the public to leave the courtroom, nor was she aware of any sign on the door. While the court has no specific memory of the impanelment, the court can conclude that at some point during the first phase of the impanelment, space became available to accommodate the public. There is no evidence that any members of the public who were waiting outside the courtroom were informed that they could enter at any time before the completion of the first phase of the impanelment.

Neither Baldner nor McNealy complained to court personnel or to the defendant about

their exclusion from the courtroom during any part of the impanelment. While Attorney George frequently spoke with members of the defendant's family during breaks in the trial, he was not informed that they, or other members of the public, were excluded. He had no reason to discuss with the defendant his right to a public trial as he was not aware of any sign or complaints by the defendant's family until the matter was raised with him by appellate counsel.

When the first phase of impanelment was completed, trial participants moved to Courtroom 25. There is no evidence that members of the public were excluded from this courtroom. As planned, individual voir dire took place in the lobby of Courtroom 25 where the prosecutors, Attorney George, the defendant, the courtroom clerk, the court reporter and the undersigned judge were all present throughout. No members of the public were present. Individual voir dire began on the afternoon of June 22, 2006 and concluded in the afternoon of June 23, 2006.

## DISCUSSION

The defendant has met his burden to establish that the courtroom was closed during the first phase of the impanelment in the larger courtroom. The testimony of the witnesses, confirmed to some extent by the affidavits, and the transcript of the proceedings establish that the public was not permitted to be present during a portion of the impanelment. Although the courtroom space was filled by the venire, the court made to findings that the public would be excluded out of necessity, and the court issued no order that members of the public be admitted as soon as space became available. The defendant's relatives, Baldner, McNealy and Mark White, at least, were present and eager to view all the proceedings. A court officer spoke with a group that included Baldner, McNealy and Mark White and told them they could not enter. In

addition, it is likely that there was a sign on the courtroom door advising the public not to enter.

While the closure was not for the entire duration of the impanelment, it was not *de minimus*. The closure spanned the entire period of the open questioning of prospective jurors. It did not consume the entire day, but must have taken a few hours. During that time, as prospective jurors were excused, seats became available that could have accommodated the public.

Although the right to a public trial is a structural right, it may be waived by the defendant if not raised in a timely manner, *Cohen*, 456 Mass. at 105-106. Although the defendant's family had numerous opportunities to raise the issue of their exclusion from the courtroom after impanelment had taken place, there is no evidence that they would have had a clear opportunity to communicate with the defendant or his attorney during the first phase of the impanelment. After impanelment and during the trial they clearly could have complained to counsel or the defendant, but they did not. It is certainly likely that the matter was not as significant to the family members as it would have been to the defendant or his attorney. Moreover, Baldner assumed there was a good reason for his exclusion, overcrowding. As the excluded family members did not inform the defendant of their exclusion in a timely fashion, the defendant cannot be said to have waived his right to a public trial by not objecting. Waiver of the right to a public trial requires the defendant's "knowing agreement." *Commonwealth v. Edward*, 75 Mass. App. Ct. 162 (2009). *Commonwealth v. LaVoie*, 80 Mass. App. Ct. 546, 550-556 (2011).

The second basis for the defendant's claim of violation of the right to a public trial is not well-founded. Individual voir dire took place in the lobby where no member of the public was present. Attorney George moved for individual voir dire at the sidebar. In the course of the

discussion of his motion, the court suggested that voir dire take place in the lobby because of the likelihood that the participants would otherwise have to stand at the sidebar for a lengthy period of time. The defendant's counsel agreed without equivocation. While Attorney George did not suggest the lobby as the location for the individual voir dire, the court offered the lobby as a proposal, not as a fait accompli. Thus, the defendant waived his right to a public trial by consenting to holding the individual voir dire in the lobby. *Commonwealth v. Rogers*, 459 Mass. 249 (2011); *cf. Commonwealth v. Downey*, 78 Mass. App. Ct. 224, 230 (2010).

## II. RIGHT TO CONFRONT WITNESSES

Multiple drug certificates were received in evidence without the opportunity for cross-examination of the chemist who analyzed the drugs. There is no dispute that the admission of those certificates violated the defendant's Sixth Amendment right to confront his accusers. *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527, 2532 (2009). The issue for this court's consideration is whether in the circumstances of this case, their admission was harmless beyond a reasonable doubt. That means, the court must ask whether "on the totality of the record," "weighing the properly admitted and the improperly admitted evidence together . . . the tainted evidence did not have an effect on the [factfinder] and did not contribute" to the guilty verdict. *Commonwealth v. Vasquez*, 456 Mass. 350, 360 (2010), quoting *Commonwealth v. Tyree*, 455 Mass. 676, 701 (2010).

It is important to note that the drug certificates in this case went before the jury in various forms and for different purposes. There were re-certifications which sought to duplicate certificates that were generated for other resolved cases in which the drugs were sent to the bunker for destruction, but were later found to be missing. These re-certifications were prepared

from a copy of the analysis sheet and the file in the hands of the original chemist. The same chemist re-certified the document and notarized it. These re-certifications likely carried less weight in the minds of the jurors because they were merely copies of certificates that were lost or destroyed. Another form of drug certificate evidence was contained in the photographs taken by Maura White. These photographs showed certificates with lab numbers that corresponded to drugs confiscated in prior cases. The purpose of this certificate evidence was not to establish the weight and composition of the drugs in the photographs, but to show where the drugs came from. The third form of certificate evidence is what is commonly offered to establish weight and composition, but may also be offered only as circumstantial evidence of the use to which an implement was put, such as the straw with cocaine residue. Thus, some of the certificate evidence was offered for nontestimonial purposes and other certificates were offered for purposes unrelated to the elements of the drug offenses.

Nevertheless, there clearly were certificates in evidence that unquestionably violated the defendant's confrontation right. Even so, this evidence would not necessarily taint a trial if the evidence is insignificant in comparison to the overwhelming weight of properly-admitted evidence. *Vasquez, supra*, at 362. Such is the case in the matter at bar.

Proof that a substance is a particular drug "may be made by circumstantial evidence." *Commonwealth v. Charles*, 456 Mass. 378, 381-382 (2010), quoting *Commonwealth v. Dawson*, 399 Mass 465, 467 (1987). Here, the Commonwealth offered powerful proof of the composition of the cocaine without regard to the certificates. Long-term cocaine users Maura White and Nancy White gave detailed testimony concerning the cocaine they ingested on numerous occasions with the defendant. According to them, the defendant supplied the cocaine they all

repeatedly used in the company of one another. Crisafulli, also a drug user, played the role of the defendant's cocaine distributor. He testified as an experienced dealer who knew his trade and was able to evaluate the quality of various formulations of cocaine. The evidence showed that the defendant spoke of obtaining the cocaine from the bunker, making money from its sale and replacing the cocaine with a counterfeit substance to avoid detection. His use of cocaine was further documented by the evidence that he tested positive for cocaine at the time of his arrest.

The jury did not have to rely on the certificates to determine the weight of the cocaine. Ample evidence was offered through several witnesses' testimony and exhibits, such as the kilogram-sized wrapper and the photographs of multiple kilograms of cocaine taken by Maura White. There was also testimony from eyewitnesses to the effect that the defendant removed cocaine from a kilogram-sized wrapper for repackaging and use. Aided by police testimony, the jury could readily find that the amount of cocaine in the possession of the defendant exceeded 200 grams.

## III. OTHER CLAIMS OF ERROR

The defendant asserts that his right to be present and right to counsel were violated when the court responded to a question from the deliberating jury in the absence of the defendant and his counsel. The defendant bases his claim on the fact that the jury propounded a jury to the court at 10:45 a.m. on July 12, 2006 and the court, at some later time, provided an answer to the jury, written on the same paper as the question. The defendant says that he and his attorney were away from the courthouse when they were notified of the question. They proceeded to return to court, however, "[t]he question was apparently addressed before we got back to court." The transcript gives no indication of who, if anyone, was present for the question or the answer.

It is the court's practice to permit all counsel to review questions from the jury with their clients, and, either to propose a response and reach an agreement as to the proper response; or if the court first proposes a response, to propose an alterative response, or to object to the court's response. When the court can respond briefly to a jury question, it is the court's practice to respond in writing, without bringing the jury into the courtroom. However, any comment, objection or proposed response by an attorney is always in the courtroom on the record in the presence of the defendant. While the court has no memory of this question, considering the insignificant nature of the question, it is likely that the court prepared her written response, then gave the attorneys an opportunity to review it in the presence of the defendant. Having received no objection or alternative response from the attorneys, the court had the answer sent to the jury. Thus, Attorney George and the defendant are likely correct that they were not present when the jury came back with a question. However, they are likely incorrect to imply that the court responded to a question that they did not see or have an opportunity to comment on the response.

In any event, the defendant has not shown that he was prejudiced. The question was not a question "of legal significance" as that term is used in *Commonwealth v. Bacigalupo*, 49 Mass. App. Ct. 629, 632 (2000). It did not require the court to exercise any discretion in crafting a response. The jurors asked: "Do we need to determine a value of the larceny if it is in excess of $250.00?" There is only one possible answer to that question, and if any attorney requested that the court elaborate on that answer, the court could rightly refuse.

The final set of errors claimed by the defendant is ineffective assistance of counsel. Although the defendant asserts several grounds for this claim, none provides a sound basis for granting a new trial.

**ORDER**

For the reasons stated herein, the defendant's Motion for a New Trial is **ALLOWED** on the grounds that his Sixth Amendment right to a public trial was violated.

Barbara A. Dortch-Okara
Justice of the Superior Court

Date: August 8, 2012