

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

**SUPERIOR COURT DEPARTMENT
DOCKET NOS. 2481-0006; 2481-0351**

COMMONWEALTH

v.

HENRY DEL-RIO

COMMONWEALTH'S STATEMENT OF THE CASE

Now comes the Commonwealth in the above-captioned matters and submits this Statement of the Case. This statement is provided to assist the court and is not intended to be a bill of particulars, nor does it contain all information known to the Commonwealth at this time.

Circumstances of the Shooting

In the early morning hours of August 13, 2015, a crowd of concert-goers congregated in the parking lot outside the Braza Grill, a restaurant and nightclub in Everett, Massachusetts. Ashlee Berryman, age 21, had attended the concert that evening to support her boyfriend, who was one of the performers. Also in the parking lot was the Defendant, Henry "J.R." Del-Rio, with a group of his acquaintances, several of whom were associated with the East Side Money Gang.

At approximately 12:50 AM, two men who had not been at the concert arrived in the area. One of those men, who had a prior history of animosity with members of the East Side Money Gang, became engaged in a verbal argument with a male party in the parking lot. That argument had concluded without any violence, and the parties had separated,

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when Del-Rio drew a .40 caliber semi-automatic pistol and fired nine times at the two men. Del-Rio continued firing as the men turned and ran, missing one but hitting the other in his feet and ankles. Two of the bullets that missed their target became lodged in a wooden municipal sign; another smashed through the front window of a pharmacy across the street; a fourth passed through the roof of a passing car, narrowly missing the driver. A fifth bullet was recovered from the ankle of one of the male targets during his treatment at Boston Medical Center. A sixth bullet hit Ashlee Berryman in the center of her back, perforating her lung, her pericardial sac, the left atrium of her heart, and her proximal aorta. Her wounds were fatal.

Ballistic Evidence

The Everett Police Department's ShotSpotter system, which uses sensitive microphones to identify and triangulate the source of gunfire, immediately identified nine gunshots fired in rapid succession and directed police to the area. State Police crime scene investigators arrived at the scene and recovered eight spent cartridge casings from the parking lot. A trooper from the State Police Firearms Identification Section conducted examination of each of the cartridge casings in a laboratory environment and was able to determine that they had all been fired from the same weapon. The spent projectiles and the spent cartridge casings were all determined to be consistent with having been fired from a .40 caliber Glock semiautomatic pistol.

Del-Rio's False Alibi Statements

On August 24, 2015, Henry "J.R." Del-Rio was interviewed by police homicide investigators. He admitted being at the Braza Grill on the night of August 12 and the morning of August 13, 2015, but claimed that he had left when the show was over, and

denied being present for any shooting episode. He alternated between several descriptions of the manner in which he had left, claiming first that he did not know the color of the car he left in; then that it was a white car; then that it was a taxi; then that it was a livery service car that he had paid for while waiting outside the club. Asked which livery service or taxi service it was, Del-Rio again changed his story and claimed that he had been driven home by a friend.

Further investigation revealed that Del-Rio's denials were an attempt to mislead investigators. Over the course of a lengthy investigation, multiple witnesses were identified who placed Del-Rio in the Braza Grill parking lot at the time of the shooting. One witness identified during the course of the investigation revealed that he had seen Del-Rio with a loaded .40 caliber pistol in the weeks prior to the shooting, and that after the shooting Del-Rio had admitted that he had fired the shot that killed Ashlee Berryman. Del-Rio told the witness, "I fucked up bro – I think I shot shorty [a female]." Another witness indicated that he had previously seen Del-Rio with a Glock pistol, a type of semiautomatic firearm with distinctive rifling characteristics consistent with the projectiles recovered from the crime scene.

Conspiracy to Obstruct the Investigation

In the aftermath of the shooting, Del-Rio met with a group of associates at a private residence in Chelsea to discuss what had happened at the Braza Grill. At the meeting, Del-Rio admitted that he had fired the shots in the parking lot. He claimed that he had seen the two men in the parking lot, and that one of the men had started shooting, so Del-Rio started "dumping back" - an expression meaning returning fire. This claim was a fabrication. Video surveillance footage confirmed that neither of the two men Del-Rio had targeted had

fired or even drawn a weapon at the time that shots were fired at them. Del-Rio himself suffered no injuries, nor did anyone else in the northwestern end of the parking lot, where Del-Rio was located. Crime scene personnel who closely examined the scene located no cartridge casings, projectiles, or bullet damage to property consistent with a firearm being discharged in a northwestern direction, toward Del-Rio or members of his group. The ShotSpotter recording did not capture any audio signature consistent with the discharging of a second weapon. The nature of the injuries to the surviving male victim also contradicted Del-Rio's claim that he had fired in self-defense; the surviving male victim had suffered gunshot wounds to the sole of his right foot, and to the Achilles tendon area of his left ankle, consistent with his back having been turned to the man who shot him.

At the conclusion of the Chelsea meeting, each of the individuals present, including the Defendant, agreed that they should say nothing about what had happened and that they should dispose of the murder weapon. That weapon has never been recovered. Two different witnesses who were identified during the course of the investigation revealed that Del-Rio subsequently admitted to them that he had personally disposed of the weapon.

The East Side Money Gang Conspiracy

At the time he possessed the .40 caliber Glock semi-automatic firearm outside the Braza Grill, Del-Rio was a member of an ongoing criminal conspiracy known as the East Side Money Gang (ESMG). That organization, based in the City of Chelsea, was engaged in a conspiracy to conduct enterprise affairs through a pattern of racketeering activity, also known as a RICO conspiracy, including conspiracy to distribute cocaine and cocaine base; to distribute heroin in an amount over 100 grams; and to sell firearms. These actions each constituted felonies under the General Laws of Massachusetts. Del-Rio admitted to his role

in the ESMG conspiracy on February 21, 2018 in a proceeding before the Federal District Court in Boston. On April 17, 2020, Del-Rio admitted before the Middlesex Superior Court that a different firearm he possessed on May 6, 2016 was possessed during the commission of and in furtherance of the ESMG conspiracy, making its possession a violation of G.L. c. 265, § 18B. Likewise, the .40 caliber Glock pistol used in the Braza Grill shooting was possessed during the commission of and in furtherance of the goals of the ESMG conspiracy.

Prior Firearms Conviction

At the time of the Braza Grille shooting, Del-Rio was also a prior violator of the state prohibition on the unlicensed possession of firearms. On June 6, 2013, Del-Rio had previously been found delinquent of Carrying a Firearm in the Chelsea Juvenile Court, docket no. 13-DL-0267. He was not, and had never been, the holder of a License to Carry or Firearms Identification Card, at the time of the Everett shooting. Accordingly, his subsequent unlawful possession of a functioning firearm constituted a violation of G.L. c. 269, § 10(d).

Respectfully Submitted
For the Commonwealth

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