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2025-P-0069

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Commonwealth of Massachusetts

Supreme Judicial Court

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COMMONWEALTH

*v.*

ALLAH MALLORY

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APPLICATION FOR DIRECT APPELLATE REVIEW

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## TABLE OF CONTENTS

Request for Direct Appellate Review .....	3
Prior Proceedings.....	4
Statement of Facts .....	7
A. The warrant authorizing the search of Mr. Mallory’s home. ....	7
B. The New Trial Motion .....	7
1. Hearing Evidence .....	9
2. <i>Franks</i> ruling .....	12
Issues Presented.....	14
Argument.....	15
A new trial is required because materially false statements in the affidavit rendered the warrant invalid.....	15
A. The failure to investigate and challenge the veracity of the warrant application was unreasonable and constitutionally ineffective.....	15
B. Alternatively, the evidence invalidating the warrant was not reasonably discoverable through reasonable pretrial diligence. ....	19
Reasons Why Direct Appellate Review is Appropriate .....	24
Conclusion .....	26
Appendix .....	27
Certificate of Compliance .....	84
Certificate of Service .....	85

## REQUEST FOR DIRECT APPELLATE REVIEW

For half a century, *Franks* has ensured that the “factual showing sufficient to show probable cause” for a warrant “will be a *truthful* showing.” *Franks v. Delaware*, 438 U.S. 154, 165-165 (1978) (emphasis in original). But what happens when an affiant’s materially false statement is concealed from the defendant until after trial? This appeal presents novel questions of systemic importance at the intersection of the ineffective-assistance and newly discovered evidence doctrines in the context of post-conviction *Franks* motions.

After an evidentiary hearing on Mr. Mallory’s new trial motion, the motion judge concluded that the affiant’s recklessly false statements voided the warrant authorizing the search of Mr. Mallory’s home, under *Franks*. But the court went on to conclude that Rule 30 afforded no remedy for the violation of Mr. Mallory’s constitutional rights, because the evidence—which was in the Commonwealth’s possession—was uncovered during a posttrial investigation. He reasoned that (1) the failure to uncover the affiant’s recklessly false statement did not constitute ineffective assistance, but (2) that the recklessly false statement was not newly discovered, as some reasonably diligent trial counsel could have uncovered it, with reasonable pretrial diligence.

That approach, which strands Mr. Mallory in a post-conviction no man's land, is untenable. Adopting it would immunize materially false statements sworn to a magistrate so long as they remained obscured until after trial, undermining *Franks*' "deterrence of deliberate or reckless untruthfulness in a warrant affidavit." *Id.* at 167. In these circumstances, a conclusion that a constitutionally adequate investigation failed to uncover the evidence that led to a successful post-conviction *Franks* motion implies that the grounds for a pretrial *Franks* motion were not reasonably discoverable. But if the pretrial investigation was constitutionally unreasonable, Mallory was deprived of a substantial ground of defense.

Rule 30 provides a remedy where the defendant was deprived of a meritorious *Franks* challenge, regardless of whether the source of the deprivation was deficient performance, or new evidence. That matters most where (as here) the misstatements concern "the integrity of the affiant's representations as to his own activities," *Franks*, 438 U.S. at 170, but are unknown to the defendant. Pursuant to Mass. R.A.P. 11, Mr. Mallory respectfully requests direct appellate review of the order denying his motion for a new trial on his convictions in the Plymouth Superior Court.

#### PRIOR PROCEEDINGS

On June 28, 2016, a Plymouth County Grand Jury returned indictments charging Allah Mallory with trafficking heroin, G.L. c. 94C, § 32E(c) (#1),



trafficking cocaine, G.L. c. 94C, § 32E(b) (#2), unlawful possession of firearm, G.L. c. 269, § 10 (h) (#3), unlawful possession of ammunition, G.L. c. 269, § 10(h) (#5), possession of a firearm during a felony, G.L. c. 265, § 18B (#7), and two counts of firearm violations with three prior qualifying convictions, G.L. c. 269, § 10G(c) (#4 and #6).

The case was tried before a jury (Gildea, J., presiding) in August and September, 2019. The jury returned guilty verdicts on counts 1, 2, 3, 5, and 7 on August 26, 2019. Thereafter, a second jury returned guilty verdicts on counts 4 and 6 on September 10, 2019. Mr. Mallory was sentenced to sixteen to eighteen years, to be served concurrently.

Mr. Mallory filed his notice of appeal on September 12, 2019. The appeal was docketed in the Appeals Court on October 6, 2020, and stayed pending litigation on a motion for a new trial. Mass. R. Crim. P. 30(b). Mr. Mallory filed his Rule 30 motion on February 5, 2021. The court (Gildea, J.) denied the motion without an evidentiary hearing on July 23, 2021. The court thereafter reconsidered that order, and ordered that discovery be provided to post-conviction counsel. On May 26, 2023, the court concluded that Mr. Mallory had met his burden for an evidentiary *Franks* hearing.

The court held hearings on July 18 and October 5, 2023. On December 28, 2023, the court issued a Memorandum of Decision and Order, concluding under

*Franks* that the affidavit in support of the warrant contained material misstatements of fact made with reckless disregard for the truth. The court ordered supplemental briefing on the issues of staleness and ineffective assistance.

On February 29, 2024, Mr. Mallory renewed and amended his Rule 30 motion, and the parties filed supplemental briefs. On September 4, 2024, the court issued a Memorandum of Decision and Order. The court concluded that, after excising the materially false information, the warrant did not make out probable cause. The court went on to conclude, however, that trial counsel's failure to file a viable *Franks* motion was not ineffective, and that the basis for the viable *Franks* motion was not newly discovered. The court therefore denied relief under Rule 30.

Mr. Mallory timely noticed his appeal, and it was docketed in the Appeals Court on January 25, 2025. On February 4, 2025, the Appeals Court ordered that his direct appeal (2020-P-1133) and this appeal from the denial of the Rule 30 motion (2025-P-069) be paired for consideration by the same panel.<sup>1</sup>

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<sup>1</sup> By separate application, Mr. Mallory also seeks direct appellate review of the novel and systemically important issues presented in the bifurcated Armed Career Criminal Act trial. *Commonwealth v. Mallory*, 2020-P-1133. Mr. Mallory respectfully requests that this Court allow both applications for direct appellate review.

## STATEMENT OF FACTS

### **A. The warrant authorizing the search of Mr. Mallory's home.**

The affidavit describes three controlled buys: “on or about” March 22, March 31, and April 14, 2016. According to the affidavit, Detectives Matthew Graham and Jeffrey Costello met with the CI to conduct the “on or about March 22, 2016” controlled buy, and Graham and Detective Brian Donahue met with the CI for the “on or about” March 31 and April 14 controlled buys. For the “on or about” March 22 and April 14 buys, Graham averred that the CI contacted Mr. Mallory at “508-933-5969.” The buys were arranged by “dial[ing] the phone number.”

With respect to the third controlled buy, “on or about April 14,” the affidavit states that Graham and Donahue “met [the CI] at a prearranged location.” Graham then observed the CI arrange the drug purchase “via telephone (508-933-5969).” According to the affidavit, “Det. Donahue provided surveillance” to 933 Warren Avenue while the CI “was observed” to enter and exit the residence.

The warrant was authorized by the magistrate judge. The evidence and testimony at trial was entirely the fruit of the resultant search of Mr. Mallory's home.

### **B. The New Trial Motion**

Mr. Mallory moved to vacate his conviction under Mass. R. Crim. P. 30(b). The motion explained that trial counsel's failure to investigate and challenge the veracity of the affidavit was constitutionally ineffective, as follows: The failure to

investigate was not strategic or tactical. Any decision not to investigate would have been manifestly unreasonable. As the evidence presented established, Graham's affidavit relied on material misstatements concerning the "on or about" April 14 controlled buy. The failure to investigate and challenge the veracity of the affidavit deprived Mr. Mallory of a viable defense. *Franks*, 438 U.S. at 171. Without that controlled buy, the information in the Graham affidavit was stale. In the alternative, the evidence contradicting the veracity of the affidavit was not reasonably discoverable through reasonable pretrial diligence. The motion also raised *Brady* claims, because false statements in the affidavit undermined the credibility of a key Commonwealth witness.

The motion was supported by affidavits of the defendant, trial counsel, and post-conviction counsel. It attached Mr. Mallory's phone records for the relevant phone numbers and dates and official Brockton Police scheduling timesheets for Graham and Donahue.

The Brockton Police scheduling timesheet for Donahue, procured by post-conviction counsel pursuant to a public records request, shows that Donahue was "OFF" on April 14, 2016, the date that Graham averred that Donahue provided surveillance for a controlled buy. The Commonwealth urged the motion judge to dismiss the new trial motion without an evidentiary hearing. It argued that

“Donahue . . . was working on April 11<sup>th</sup>, 12<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, and 17<sup>th</sup>” and “all of these dates would fall under the ‘on or about’ time range for April 14<sup>th</sup>.”

Mr. Mallory sought post-conviction discovery pursuant to Mass. R. Crim. P. 30(c)(4), to establish the actual dates of the alleged controlled buys. The Commonwealth opposed discovery.

The court ordered the disclosure of discovery documents, subject to a protective order, on March 28, 2023 (two years after the discovery motion), over the Commonwealth’s objection to the disclosure of the dates.<sup>2</sup> Those records established that the third controlled buy (“on or about April 14”) occurred (if it occurred at all) on [REDACTED] [REDACTED]—contrary to Graham’s averment that Donahue was present at the buy on that date. The motion judge therefore ordered an evidentiary *Franks* hearing on the new trial motion.

### **i. Hearing Evidence**

At the evidentiary hearing, the court heard testimony from Graham and Donahue, and considered twenty-seven exhibits.

#### **a. [REDACTED] scheduling and payroll timesheets**

##### Detective Graham

OVERTIME/COURT (8:58 a.m. to 11:10 a.m.)

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<sup>2</sup> Mr. Mallory moved for post-conviction discovery on February 17, 2021. He renewed his motion on October 8, 2021, and March 23, 2022.

TIME DUE (12:00 p.m. to 4:00 p.m.)  
REGULAR SHIFT, 4 hrs. (4:00 p.m. to 8:00 p.m.)

Detective Donahue

[RAII:09]: OVERTIME/COURT (9:13 a.m. to 1:07 p.m.)  
[RAII:30]: REGULAR SHIFT (OFF)

**b. Evidence Log**

The Evidence Log shows the actual dates when the alleged buys occurred, and the time that the suspected drugs were delivered to the locker. Graham delivered suspected heroin to the locker at [REDACTED].

**c. [REDACTED] phone records**

Mr. Mallory's Verizon phone records for the relevant days were entered as exhibits by agreement at the *Franks* hearing.

The phone records contain a record of every outgoing and incoming call to the given phone number, including when the call occurred, and its duration.

There are [REDACTED] calls to 508-933-5969 between [REDACTED] (the first time that both detectives were working) and [REDACTED]. (the last time when both detectives were working).

There is [REDACTED] incoming call to 508-933-5969 between [REDACTED] (when the alleged drugs were turned into the evidence locker) on [REDACTED]. That single incoming call occurred at [REDACTED] m., when Donahue was not working.

#### d. Graham testimony

Graham was the “control officer” for the CI. The Confidential Informant Activity Form, which mandates memorializing “whenever” the control officer “receives” information from a CI “which is of intelligence value regarding criminal activity or upon receipt of information, which is the basis for a search warrant,” “was a written policy that was never implemented.” Accordingly, there was no contemporaneous account memorializing when the controlled buys occurred.

Graham testified that, on [REDACTED], he worked “OVERTIME/COURT” at the Brockton Superior Court from [REDACTED] “[A]fter court, I put in for time due” in order to “conduct [a] heroin buy with Allah Mallory using a confidential informant.” According to Graham, the [REDACTED] TIME DUE log entry “reflect[ed] the narcotics investigation CI buy that [he] did with Detective Donahue.” The entry was “put” in at [REDACTED] [P.M.], narcotics investigation.”

Graham testified that the [REDACTED] controlled buy was necessary because the first warrant that he had obtained, on April 1, “had gotten stale, so I had to freshen it up.” Graham “knew [he] needed another person [because] we’re not allowed to do them by ourselves.” Each of the controlled buys described in his affidavit were arranged by the CI “placing phone calls . . . in my presence, a hundred percent.”

### e. Donahue testimony

Donahue did not “specifically” recall whether he participated in the [REDACTED] controlled buy. He relied on “what I see a co-worker wrote” in the warrant application. Donahue was OFF of his regular [REDACTED] to [REDACTED] on [REDACTED]. The payroll records showed that he worked COURT/OVERTIME hours from [REDACTED] [REDACTED]. There was no record of any work after that.

Donahue did not have working hours unaccounted for in the Brockton Police Department’s records. If he “worked outside hours,” he would “submit a form to be paid either for overtime or court time.”

### 2. *Franks* ruling

Judge Gildea concluded that “pursuant to *Franks*, materially false statements void the search warrant affidavit’s averments regarding an [REDACTED] controlled buy.”

His memorandum stated: “Based upon its review of the records, the court agrees with the defendant’s assessment concerning the timeframe of the phone calls, the officers’ work schedules, and Detective Graham’s submission of evidence to the evidence locker.” In short, the evidence established that “Detective Donahue was not working during the timeframe in which this alleged controlled buy occurred.” He found that “Detective Graham’s sworn statements, attesting to



Detective Donahue's presence during the [REDACTED] controlled buy, are directly at odds with the information established by the record."

Judge Gildea rejected the Commonwealth's "attempts to dispute this analysis" as "based solely upon speculation and generalities regarding Detective Graham's practices in preparing search warrant affidavits." He found "no support" for the Commonwealth's "efforts to undermine the sufficiency of the evidence established by the phone records" with speculation that they were "only for billable activity" or "in another time zone other than Eastern." Finally, the court "d[id] not credit the Commonwealth's argument" concerning purported ability of the defendant (and the CI) to communicate by other means. "[T]he pertinent inquiry specifically concerns the phone number the defendant allegedly used to receive phone call on [REDACTED]" as averred in Graham's affidavit.

Judge Gildea explained that "[b]y excising the [REDACTED] controlled buy at issue, the warrant affidavit establishes that the last controlled buy was conducted on [REDACTED] The officers executed the search warrant on April 20, 2016. The critical question becomes whether this lapse in time . . . render[ed] the supporting evidence stale."

"[G]iven [the] fairly considerable gap," between the last valid controlled buy and the warrant's execution "the staleness analysis turns on whether the defendant's practices were . . . protracted or continuous." Two controlled buys

( [REDACTED] ) over the course of nine days did not establish “continuous conduct.” Consequently, the judge concluded, the “search warrant was stale when it was executed on April 20.”

Judge Gildea went on to conclude, however, that Mr. Mallory was not entitled to post-conviction relief, because trial counsel’s failure to investigate or pursue a *Franks* motion was not constitutionally ineffective. Judge Gildea concluded that the newly discovered evidence doctrine did not afford relief for the invalid warrant either. He reasoned that although the failure to obtain the records did not fall below the standard of an ordinary fallible attorney, *some* attorney “could reasonably have discovered [this] evidence prior to trial” through “reasonable pretrial diligence.”

### ISSUES PRESENTED

1. The motion judge concluded that “ineffective assistance of counsel does not turn on what constitutes reasonable pretrial diligence.” Was that a correct statement of law? Was the failure to investigate the viable *Franks* challenge constitutionally reasonable in the circumstances?

2. The motion judge also concluded that an attorney could reasonably have discovered the evidence invalidating the warrant before trial. Was the evidence reasonably discoverable by a reasonably diligent attorney, where the Commonwealth opposed and withheld the discovery of the timesheets critical to the *Franks*

claim during the new trial litigation? Does Rule 30 provide a remedy for a meritorious post-conviction *Franks* motion at the confluence of ineffective-assistance and newly-discovered evidence doctrines?

Both of these issues were raised in Mr. Mallory's Rule 30 motion and are properly preserved for this Court's review.

### ARGUMENT

**A new trial is required because materially false statements in the affidavit rendered the warrant invalid.**

**A. The failure to investigate and challenge the veracity of the warrant application was unreasonable and constitutionally ineffective.**

The state and federal constitutions require a new trial where counsel's representation (1) falls below that of an ordinary fallible lawyer, and (2) deprived the defendant of a substantial ground of defense. *Commonwealth v. Saferian*, 366 Mass. 89, 96 (1974). Both prongs are met here.

Judge Gildea's *Franks* ruling resolves the second (prejudice) prong of the *Saferian* test. The question is whether the failure to investigate the veracity of the warrant application before trial constituted deficient performance. It did.

Judge Gildea reasoned that "ineffective assistance of counsel does not turn on what constitutes reasonable pretrial diligence." This misstates the law. Effective representation does require reasonable pretrial diligence. And here, counsel unreasonably overlooked a viable investigative inquiry.

“The duty to investigate is one of the foundations of effective assistance of counsel, because counsel’s strategic decisions can be adequate only if counsel is sufficiently informed of available options.” *Commonwealth v. Long*, 476 Mass. 526, 532 (2017). The deficient performance here began and ended with an inadequate investigation.

“There is nothing strategic or tactical about ignorance.” *Pineda v. Craven*, 424 F.2d 369, 372 (9th Cir. 1970). “Informed legal choices can be made only after an investigation of options.” *Strickland v Washington*, 466 U.S. 668, 680 (1984). A failure to reasonably investigate is not “strategic” because it is not an “informed legal choice,” following a reasonable “investigation of options.” *Id.* While there are often strategic reasons for decisions to forego a particular defense, see, e.g., *Commonwealth v. Montez*, 450 Mass. 736, 768 (2008) (witness testimony conflicted with defense theory), there is no reasonable “strategy” to limit an investigation into a possible defense in these circumstances.

The requirement of a “reasonable investigation” did not stop once trial counsel “obtained [the] pertinent cellphone records.” See *Commonwealth v. Holbrook*, 482 Mass. 596, 608 (2019) (despite specifically requesting data on a computer’s hard drive, counsel failed to conduct an independent forensic examination); *Commonwealth v. Alvarez*, 433 Mass. 93, 102 (2000) (failure to examine mental health records). Because trial counsel failed to investigate the

detectives' whereabouts during the times corresponding to incoming phone calls (or even during the relevant days), he was not in a position to make a decision whether to bring a *Franks* challenge. An investigation that fails at this task stumbles at the gate.

The importance of this information to the viability of the *Franks* challenge is apparent. If either of the detectives were not working on the relevant days (or times), Mr. Mallory would have sustained his substantial preliminary showing for a *Franks* hearing, as indeed Judge Gildea ruled in the post-conviction litigation.

Trial counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Commonwealth v. Tavares*, 491 Mass. 362, 366 (2023). Trial counsel here did neither. The investigation into the veracity of the affidavit was not reasonable. And the decision not to investigate, or as Judge Gildea put it — not "to take additional investigation concerning the defendant's cellphone records vis-à-vis the officers' timesheets" — was not reasonable either, because it was not a "reasonable decision that . . . a particular investigation [was] unnecessary." *Tavares*, at 365.

There was no strategic reason for failing to analyze the phone records or for failing to investigate the detectives' whereabouts (which would have alerted counsel that Donahue was "OFF" on [REDACTED]). The only plausible reading of trial counsel's approach is consistent with the one set out in his affidavit, that he

“simply overlooked,” *Commonwealth v. Acevedo*, 446 Mass. 435, 447 n.16 (2006), the importance of analyzing the phone records for incoming calls, and did not grasp the significance of inquiring into the whereabouts of the officers at the relevant times. This does not reflect a strategy but instead “incompetency, inefficiency, or inattention” to the task at hand. *Id.*

In any event, “where a strategic decision is made to conduct something less than a complete investigation of a potentially substantial . . . defense [the court] asks whether it was manifestly unreasonable to conduct so limited an investigation.” *Commonwealth v. Epps*, 474 Mass. 743, 758 (2016). Importantly, courts do not defer to defense counsel’s decisions not to investigate. *Id.* at 757 (contrasting decisions made “after conducting complete investigation” with those made after “something less than a complete investigation”).

*Alvarez* is instructive. This Court explained that there could be “no strategic reason for not investigating” medical records that were potentially helpful to the defense. 433 Mass. at 102. The Court emphasized that “there is no strategic risk whatsoever in simply obtaining records” for review. *Id.* at 102. In these circumstances, the decision “not to investigate” was manifestly unreasonable as a matter of law. *Id.* at 102. The same is true here.

**B. Alternatively, the evidence invalidating the warrant was not reasonably discoverable through reasonable pretrial diligence.**

**I. The critical evidence was newly discovered .**

Judge Gildea concluded that trial counsel's failure to investigate a *Franks* challenge was not ineffective. He went on to conclude that the "evidence at issue" was not newly discovered either. This was so, the court reasoned, because "ineffective assistance of counsel does not turn on what constitutes reasonable pretrial diligence." That was error.

"Evidence is newly discovered if it was unknown to the defendant or his counsel and not reasonably discoverable through reasonable pretrial diligence." *Epps*, 474 Mass. at 764. If the Court concludes that trial counsel's pretrial investigation was constitutionally effective, then the evidence uncovered post-conviction meets this test.

The evidence invalidating the warrant at the post-conviction *Franks* hearing was newly discovered, for three reasons.

I. In these circumstances, a conclusion that trial counsel conducted a constitutionally-adequate investigation that failed to uncover the evidence that led to the successful post-conviction *Franks* motion compels the conclusion that the grounds for a pretrial *Franks* motion were "not reasonably discoverable through reasonable pretrial diligence." *Epps*, 474 Mass. at 764.

That evidence includes the discovery establishing the actual dates (rather than the “on or about” dates set out in the warrant application) of the alleged controlled buys. This was the evidence that ultimately entitled Mr. Mallory to an evidentiary *Franks* hearing on his post-conviction motion. It bears notice that the Commonwealth withheld this critical evidence from Mr. Mallory, and opposed post-conviction discovery to disclose it. It did so while urging that Mr. Mallory could not meet his burden for a post-conviction evidentiary hearing.

It was only after Judge Gildea ordered the Commonwealth to produce post-conviction discovery in March 2023, that the Commonwealth was compelled to concede that an “evidentiary hearing should be appropriate,” because the evidence logs established that third controlled buy occurred on [REDACTED] a date that Donahue was listed as [REDACTED]”

2. Moreover, the evidence crucial to *the resolution of the Franks motion* was not disclosed to Mr. Mallory until the eve of the post-conviction evidentiary *Franks* hearing (in July 2023), years after he moved for a new trial, over the Commonwealth’s objection. It was these detailed records, Judge Gildea explained, that established that “any overlapping time between the two detectives’ shifts ended at 1:07 p.m.” Importantly, these detailed timesheets were not disclosed to post-conviction counsel pursuant to his public records act request. It is therefore



difficult to imagine how trial counsel could have uncovered the essential information through “reasonable pretrial diligence.” *Epps*, 474 Mas. at 764.

3. The motion judge’s *Franks* finding fits the newly-discovered evidence framework as well. *Ramirez* is instructive. There, the new-trial motion relied on “similar instances of misconduct [by the same police unit] established in [*Commonwealth v. Lewin*, 405 Mass. 566 (1989)].” *Commonwealth v. Ramirez*, 416 Mass. 41, 47 n.12 (1993). The Court rejected the Commonwealth’s “claim that the defendant was precluded from submitting newly discovered evidence on a posttrial motion for a *Franks* hearing because the defendant had access to such evidence at the time of his initial motion to suppress.” *Id.* at 47 n.12. “[B]ecause this court’s decision in *Lewin* had not been rendered at the time of the defendant’s initial motion to suppress, the defendant could not reasonably be expected to uncover at that time evidence now essential to his case.” *Id.*

The “procedural route” for a posttrial *Franks* motion, 416 Mass. at 47, applies here. Newly-discovered evidence encompasses facts “uncovered, whether in [other] litigation [or] in this case through further [post-conviction] motion practice.” *Commonwealth v. Watkins*, 98 Mass. App. Ct. 419, 429 n.5 (2020).

**2. Rule 30 provides a remedy where the combination of the newly discovered evidence and ineffective assistance deprived the defendant of a substantial ground of defense.**

As the *Epps* Court explained, the “touchstone” of Rule 30 “must be to do justice and that requires” a new trial where “the defendant was deprived of a substantial defense, regardless of whether the source of the deprivation is counsel’s performance alone, or the inability to make use of relevant new [evidence] alone, or the confluence of the two.” *Epps*, 474 Mass. at 767.

That wisdom is even more salient in the circumstances of this case. The difficulty in *Epps* related to advances in medical and scientific knowledge. Whatever the reason for the absence of expert testimony at trial (deficient performance or new research), the Commonwealth was blameless. Here, by contrast, the evidence substantiating the *Franks* motion — Detective Graham’s “at a minimum, reckless[ly]” false statement in his sworn affidavit — concerns “the integrity of the affiant’s representations as to his own activities,” *Franks*, 438 U.S. at 170, and may therefore be attributed to the Commonwealth. Moreover (as set out above) the Commonwealth consistently resisted discovery efforts during the post-conviction litigation.

Judge Gildea reasoned that *Epps* was inapposite because the “newly discovered evidence [in Mr. Mallory’s case] involves more tangible items and information, rather than newly developed scientific or medical findings.” But that

is a distinction without a difference. If anything, the fact that the “tangible items” (detailed payroll timesheets) and “information” (Graham’s false statement about Donahue’s presence on [REDACTED] were in the Commonwealth’s possession cuts in favor of Mr. Mallory, and a remedy for the *Franks* violation under Rule 30.

Whether or not the false statement in the Graham affidavit was discoverable through reasonable pretrial diligence, Mr. Mallory was deprived of a substantial ground of defense that marred the proceedings from the beginning of this case. Separately and in combination, the “confluence” of factors that obscured the discovery of the materially false averments in the Graham affidavit entitle him to relief. *Epps*, 474 Mass. at 767.

The bottom line is that “if the trial were conducted today,” with counsel who had the information disclosed in postconviction discovery, “it would be manifestly unreasonable for counsel to fail” to challenge the warrant under *Franks*. *Id.* at 766. In these circumstances, the court “need not determine whether it was manifestly unreasonable . . . for trial counsel to have failed to make the additional effort needed to” establish that Donahue was not working during the only time consistent with the veracity of the narrative in the Graham affidavit. *Id.* at 767. “It suffices” to conclude that Mr. Mallory “was deprived of a defense from the confluence of counsel’s failure” to uncover the false statement in the affidavit before

trial, and the new information that came to light in the process of investigating the post-conviction *Franks* motion. *Id.*

#### REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

This appeal presents “questions of first impression . . . concerning the Constitution[s] of the Commonwealth [and] of the United States” that are “of such public interest that justice requires a final determination by [this] Court.” Mass. R.A.P. 11(a).

In this case, the postconviction “judicial inquiry into the veracity of the underlying facts,” concluded that the affiant’s statements, necessary to establish probable cause, were made with “reckless disregard for the truth.” *Commonwealth v. Amral*, 407 Mass. 511, 519 (1990). If trial counsel had uncovered the materially false statement prior to trial, there is no question that the fruits of the search would have been suppressed.

The motion judge concluded that the posture of this *Franks* motion commanded a different result, and precluded any postconviction remedy for the violation of Mr. Mallory’s art. 14 and Fourth Amendment rights. He reasoned that diligent trial counsel could have uncovered the evidence presented at the post-conviction *Franks* hearing before trial. But he also rejected Mr. Mallory’s ineffective assistance of counsel claim, because in his view, “ineffective assistance of counsel does not turn on what constitutes reasonable pretrial diligence.” That

ruling is internally inconsistent and untenable on its own terms. And it would insulate materially false averments uncovered posttrial from any effective judicial review.

The implication of that ruling extends beyond this case. The “theoretical underpinning of *Franks* is that the Fourth Amendment’s protection against arbitrary government action would be eviscerated if the police did not make a truthful showing of probable cause.” *Ramirez*, 416 Mass. at 49. This Court has long recognized that “[l]ogic and consistency dictates that this standard be applied to a posttrial.” *Franks* hearing. *Id.* at 47 n.12. By shielding materially false statements from constitutional remedy, the motion judge rendered post-conviction *Franks* challenges illusory. That approach is especially misguided where the obscured evidence concerns “the affiant’s representations as to his own activities,” *Franks*, 438 U.S. at 154.

The ruling below undermines the goal of “discouraging lawless or reckless misconduct,” where courts have long understood that “alternative sanctions . . . are not likely to fill the gap.” *Franks*, 438 U.S. at 169. And it does so where the “public interest in deterring police misconduct,” *Amral*, 407 Mass. at 522, is at its apex because the court has already concluded—after an evidentiary hearing—that the affiant intentionally or recklessly misstated material facts. There would be little

incentive to investigate viable post-conviction challenges to the integrity of the warrant, where the litigation is an exercise in futility.

This Court has already explained that, under Rule 30, a new trial is required “regardless of whether the source of the deprivation is counsel’s performance alone, or the inability to make use of relevant new [evidence] alone, or the confluence of the two.” *Epps*, 474 Mass. at 767. This Court should take this opportunity to clarify that this rule applies with equal force to evidence of an affiant’s deliberate or reckless misstatements to a magistrate, in a post-conviction *Franks* hearing.

#### CONCLUSION

For the reasons explained above, Mr. Mallory requests that direct appellate review be allowed.

Respectfully submitted,

Allah Mallory

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July 1, 2025



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

27

**1683CR00215 Commonwealth vs. Mallory, Allah Jerome**

<b>CASE TYPE:</b> Indictment	<b>FILE DATE:</b> 06/28/2016
<b>ACTION CODE:</b> 94C/32E/G-0	<b>CASE TRACK:</b> B - Complex
<b>DESCRIPTION:</b> HEROIN/MORPHINE/OPIUM, TRAFFICKING IN 100 GRAMS OR MORE, LESS THAN 200 GRAMS c94C §32E(c)	
<b>CASE DISPOSITION DATE:</b> 09/10/2019	<b>CASE STATUS:</b> Open
<b>CASE DISPOSITION:</b> Disposed by Jury Verdict	<b>STATUS DATE:</b> 08/28/2019
<b>CASE JUDGE:</b>	<b>CASE SESSION:</b> Criminal 3 Brockton

<b>DCM TRACK</b>		
<b>Tickler Description</b>	<b>Due Date</b>	<b>Completion Date</b>
Pre-Trial Hearing	12/02/2016	12/06/2016
Final Pre-Trial Conference	04/04/2017	11/21/2017
Case Disposition	04/14/2017	09/10/2019
Under Advisement	10/12/2017	01/31/2018
Under Advisement	12/08/2017	11/15/2017
Notice of Appeal Filed	03/10/2020	10/06/2020
Under Advisement	04/16/2022	04/16/2024
Under Advisement	11/04/2023	12/19/2023
Notice of Appeal Filed	03/28/2025	

<b>PARTIES</b>	
<b>Prosecutor</b> Plymouth County District Attorney	<b>Attorney for the Commonwealth</b> <b>690775</b> Jason David Herron Plymouth County District Attorney's Office Plymouth County District Attorney's Office 166 Main St Brockton, MA 02301 Work Phone (508) 584-8120 Added Date: 10/17/2022
	<b>Attorney</b> <b>691188</b> Julianne Campbell Plymouth County District Attorney's Office Plymouth County District Attorney's Office 166 Main St Brockton, MA 02301 Work Phone (508) 894-2512 Added Date: 09/04/2024



COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report

28

<b>Defendant</b> Mallory, Allah Jerome 933 Warren Ave 3rd floor Brockton, MA 02301	<b>Private Counsel</b> <b>678388</b> Jason Green Committee For Public Counsel Services Committee For Public Counsel Services 144 Main St 3rd Floor Brockton, MA 02301 Work Phone (508) 580-4901 Added Date: 06/05/2023
<b>Surety</b> Mallory, Omar C 7 Krypto Circle Randolph, MA 02368	<b>Appointed - Appellate Action</b> <b>601156</b> Matthew D Spurlock Committee for Public Counsel Services Committee for Public Counsel Services 109 Main St 201 Northampton, MA 01060 Work Phone (617) 910-5727 Added Date: 10/07/2019





**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

**PARTY CHARGES**

#	Offense Date/ Charge	Code	Town	Disposition	Disposition Date
1	04/20/2016 HEROIN/MORPHINE/OPIUM, TRAFFICKING IN 100 GRAMS OR MORE, LESS THAN 200 GRAMS c94C §32E(c)	94C/32E/G-0	Brockton	Sentence Date: 09/10/2019 State Prison Sentence <b>Not greater than Yrs 14 Mos 0 Days 0 Not less than Yrs 10 Mos 0 Days 0</b> Guilty Verdict	08/26/2019
2	04/20/2016 COCAINE, TRAFFICKING IN, 36 GRAMS OR MORE, LESS THAN 100 GRAMS c94C §32E(b)	94C/32E/B-2	Brockton	Sentence Date: 09/10/2019 State Prison Sentence <b>Not greater than Yrs 7 Mos 0 Days 0 Not less than Yrs 5 Mos 0 Days 0</b> Guilty Verdict	08/26/2019
3	04/20/2016 FIREARM WITHOUT FID CARD, POSSESS c269 s.10(h)	269/10/G-2	Brockton	Sentence Date: 09/10/2019 State Prison Sentence <b>Not greater than Yrs 18 Mos 0 Days 0 Not less than Yrs 16 Mos 0 Days 0</b> Guilty Verdict	08/26/2019
4	04/20/2016 FIREARM VIOL WITH 3 PRIOR VIOLENT/DRUG CRIMES c269 §10G(c)	269/10G/C-0	Brockton	Sentence Date: 09/10/2019 State Prison Sentence <b>Not greater than Yrs 18 Mos 0 Days 0 Not less than Yrs 16 Mos 0 Days 0</b> Filed - Guilty Verdict Guilty Verdict	09/03/2019 09/03/2019
5	04/20/2016 FIREARM WITHOUT FID CARD, POSSESS c269 s.10(h)	269/10/G-2	Brockton	Sentence Date: 09/10/2019 State Prison Sentence <b>Not greater than Yrs 18 Mos 0 Days 0 Not less than Yrs 16 Mos 0 Days 0</b> Guilty Verdict	08/26/2019
6	04/20/2016 FIREARM VIOL WITH 3 PRIOR VIOLENT/DRUG CRIMES c269 §10G(c)	269/10G/C-0	Brockton	Sentence Date: 09/10/2019 State Prison Sentence <b>Not greater than Yrs 18 Mos 0 Days 0 Not less than Yrs 16 Mos 0 Days 0</b> Filed - Guilty Verdict Guilty Verdict	09/03/2019 09/03/2019
7	04/20/2016 FIREARM IN FELONY, POSSESS c265 §18B	265/18B/A-3	Brockton	Sentence Date: 09/10/2019 State Prison Sentence <b>Not greater than Yrs 7 Mos 0 Days 0 Not less than Yrs 5 Mos 0 Days 0</b> Guilty Verdict	08/26/2019



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

EVENTS				
Date	Session	Event	Result	Resulting Judge
07/20/2016	Criminal 1 Brockton	Arraignment	Held as Scheduled	Kelley
10/04/2016	Criminal 1 Brockton	Pre-Trial Conference	Held as Scheduled	McGuire
12/06/2016	Criminal 1 Brockton	Pre-Trial Hearing	Held as Scheduled	McGuire
02/14/2017	Criminal 1 Brockton	Hearing on Compliance	Rescheduled	Kelley
04/03/2017	Criminal 1 Brockton	Hearing on Compliance	Held as Scheduled	Creedon
06/06/2017	Criminal 1 Brockton	Trial Assignment Conference	Held as Scheduled	Yessayan
08/08/2017	Criminal 1 Brockton	Non-Evidentiary Hearing on Suppression	Not Held	Moriarty
09/12/2017	Criminal 1 Brockton	Non-Evidentiary Hearing on Suppression	Held as Scheduled	Moriarty
11/08/2017	Criminal 1 Brockton	Evidentiary Hearing on Suppression	Held as Scheduled	Cosgrove
11/21/2017	Criminal 2 Brockton	Final Pre-Trial Conference	Held as Scheduled	Lalli
11/28/2017	Criminal 2 Brockton	Evidentiary Hearing on Suppression	Canceled	Kelley
12/05/2017	Criminal 2 Brockton	Jury Trial	Rescheduled	Chin
02/01/2018	Criminal 2 Brockton	Motion Hearing	Held as Scheduled	Chin
02/05/2018	Criminal 2 Brockton	Jury Trial	Rescheduled	Chin
02/20/2018	Criminal 2 Brockton	Hearing on Withdrawal of Attorney	Held as Scheduled	Chin
03/19/2018	Criminal 2 Brockton	Jury Trial	Canceled	Chin
03/19/2018	Criminal 2 Brockton	Conference to Review Status	Not Held	Chin
04/02/2018	Criminal 2 Brockton	Conference to Review Status	Held as Scheduled	Lalli
05/01/2018	Criminal 2 Brockton	Conference to Review Status	Rescheduled	Chin
05/07/2018	Criminal 1 Brockton	Conference to Review Status	Held as Scheduled	Davis
06/01/2018	Criminal 2 Brockton	Conference to Review Status	Held as Scheduled	Chin
09/10/2018	Criminal 1 Brockton	Motion Hearing	Held as Scheduled	Moriarty
10/05/2018	Criminal 2 Brockton	Final Pre-Trial Conference	Held as Scheduled	Kelley
11/06/2018	Criminal 2 Brockton	Jury Trial	Rescheduled	Kelley
01/04/2019	Criminal 2 Brockton	Final Pre-Trial Conference	Rescheduled	Kelley
01/11/2019	Criminal 2 Brockton	Final Pre-Trial Conference	Held as Scheduled	Davis
01/28/2019	Criminal 2 Brockton	Jury Trial	Rescheduled	Davis
02/13/2019	Criminal 2 Brockton	Final Pre-Trial Conference	Not Held	Davis
03/25/2019	Criminal 2 Brockton	Jury Trial	Not Held	Davis
03/25/2019	Criminal 2 Brockton	Conference to Review Status	Held as Scheduled	Davis



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

07/02/2019	Criminal 2 Brockton	Final Trial Conference	Rescheduled	Kelley
07/08/2019	Criminal 2 Brockton	Jury Trial	Rescheduled	Kelley
07/19/2019	Criminal 2 Brockton	Final Trial Conference	Rescheduled	Gildea
08/12/2019	Criminal 2 Brockton	Final Trial Conference	Held as Scheduled	Gildea
08/15/2019	Criminal 2 Brockton	Conference to Review Status	Held as Scheduled	Gildea
08/19/2019	Criminal 2 Brockton	Jury Trial	Not Held	Gildea
08/19/2019	Criminal 2 Brockton	Conference to Review Status	Held as Scheduled	Gildea
08/20/2019	Criminal 2 Brockton	Jury Trial	Held as Scheduled	Gildea
08/21/2019	Criminal 2 Brockton	Jury Trial	Held as Scheduled	Gildea
08/22/2019	Criminal 2 Brockton	Jury Trial	Held as Scheduled	Gildea
08/23/2019	Criminal 2 Brockton	Jury Trial	Held as Scheduled	Gildea
08/26/2019	Criminal 2 Brockton	Jury Trial	Held as Scheduled	Gildea
08/29/2019	Criminal 2 Brockton	Jury Trial	Held as Scheduled	Gildea
09/03/2019	Criminal 2 Brockton	Jury Trial	Held as Scheduled	Gildea
09/04/2019	Criminal 2 Brockton	Jury Trial	Held as Scheduled	Gildea
09/05/2019	Criminal 2 Brockton	Jury Trial	Held as Scheduled	Gildea
09/06/2019	Criminal 2 Brockton	Jury Trial	Canceled	Gildea
09/10/2019	Criminal 2 Brockton	Hearing for Sentence Imposition	Held as scheduled	Gildea
04/29/2021	Criminal 4 Plymouth	Conference to Review Status	Held as Scheduled	Gildea
05/03/2021	Criminal 3 Brockton	Conference to Review Status	Held as Scheduled	Gildea
05/11/2021	Criminal 3 Brockton	Conference to Review Status	Held as Scheduled	Gildea
06/11/2021	Criminal 3 Brockton	Conference to Review Status	Held as Scheduled	Gildea
02/11/2022	Criminal 2 Brockton	Motion Hearing	Held as Scheduled	Gildea
03/17/2022	Criminal 2 Brockton	Motion Hearing	Held - Under advisement Decision rendered	Gildea
				Gildea
09/22/2022	Criminal 2 Brockton	Motion Hearing	Canceled	Gildea
12/09/2022	Criminal 2 Brockton	Hearing on Motion for New Trial	Canceled	Gildea
01/27/2023	Criminal 2 Brockton	Hearing on Motion for New Trial	Rescheduled	Gildea
02/01/2023	Criminal 2 Brockton	Motion Hearing	Rescheduled	Sullivan
02/01/2023	Civil A Brockton	Motion Hearing		
02/15/2023	Civil A Brockton	Conference to Review Status	Held as Scheduled	Gildea
03/10/2023	Civil A Brockton	Hearing on Motion for New Trial	Rescheduled	Boone
03/24/2023	Civil A Brockton	Hearing on Motion for New Trial	Rescheduled	Boone
03/28/2023	Criminal 2 Brockton	Hearing on Motion for New Trial	Rescheduled	Sullivan
03/28/2023	Civil A Brockton	Hearing on Motion for New Trial	Held as Scheduled	Gildea



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

04/21/2023	Criminal 2 Brockton	Conference to Review Status	Rescheduled	Boone
05/19/2023	Civil A Brockton	Conference to Review Status	Not Held	Gildea
05/26/2023	Criminal 2 Brockton	Hearing on Motion for New Trial	Not Held	Gildea
05/26/2023	Criminal 1 Brockton	Hearing on Motion for New Trial	Held as Scheduled	Gildea
06/26/2023	Criminal 4 Plymouth	Hearing on Motion for New Trial	Rescheduled	Gildea
06/26/2023	Criminal 3 Brockton	Hearing on Motion for New Trial	Rescheduled	Gildea
07/18/2023	Criminal 3 Brockton	Hearing on Motion for New Trial	Held as Scheduled	Gildea
08/29/2023	Criminal 3 Brockton	Motion Hearing	Held as Scheduled	Gildea
08/30/2023	Criminal 3 Brockton	Motion Hearing	Held as Scheduled	Gildea
10/05/2023	Criminal 3 Brockton	Motion Hearing	Decision rendered Held - Under advisement	Gildea Gildea

**FINANCIAL DETAILS**

Date	Money on Deposit	Assessed	Paid	Dismissed	Balance
05/07/2018	Bail posted. Omar C Mallory, surety Receipt: 10219 Date: 05/07/2018	50,000.00	50,000.00	0.00	0.00
<b>Total</b>		<b>50,000.00</b>	<b>50,000.00</b>	<b>0.00</b>	<b>0.00</b>

Deposit Account(s) Summary	Received	Applied	Checks Paid	Balance
BAIL	50,000.00		50,000.00	0.00
<b>Total</b>	<b>50,000.00</b>		<b>50,000.00</b>	<b>0.00</b>



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

**INFORMATIONAL DOCKET ENTRIES**

Date	Ref	Description	Judge
06/28/2016	1	Indictment(s) returned	
07/20/2016		Defendant arraigned before Court.	Kelley
07/20/2016		Case assigned to: DCM Track B - Complex was added on 07/22/2016	
07/20/2016	3	General correspondence regarding appearance of Brian S. Fahy for the commonwealth	
07/20/2016		Plea of not guilty entered on all charges.	Kelley
07/20/2016		Bail set at \$0.00 Surety, \$250,000.00 Cash. Wear G.P.S.	Kelley
07/20/2016		Bail warnings read	Kelley
07/20/2016		Not arraigned on sentencing enhancements	Kelley
07/20/2016	2	Issued on this date:  Mittimus in Lieu of Bail Sent On: 07/20/2016 10:57:46	
07/20/2016	4	Commonwealth 's Notice of Discovery 1	
07/20/2016	5	Attorney appearance On this date William Albert Flanagan, Esq. added as Private Counsel for Defendant Allah Jerome Mallory	
07/20/2016		Case continued for October 4, 2016 for PreTrial Conference, December 6, 2016 for PreTrial Hearing (Kelley Brown,J) R. Griffin - Court Reporter	Kelley
07/29/2016	6	Mittimus returned to court: SERVED	
08/03/2016	7	Commonwealth 's Notice of discovery II	
08/05/2016	8	Attorney appearance On this date Frank H Spillane, Esq. added as Private Counsel for Defendant Allah Jerome Mallory	
09/19/2016	9	General correspondence regarding Notice of withdrawal of Atty Flanagan for the defendant new counsel has made an appearance	
09/19/2016		Attorney appearance On this date William Albert Flanagan, Esq. dismissed/withdrawn as Private Counsel for Defendant Allah Jerome Mallory	
10/04/2016		Case continued to December 6, 2016 by agreement re: pre-trial hearing. (McGuire, J.) J. Russo, court reporter	McGuire
12/06/2016	10	Defendant 's Motion for bill of particulars	
12/06/2016	11	Defendant 's Motion for discovery	
12/06/2016	12	Defendant 's Motion for discovery of drug analysis	
12/06/2016		Case continued to February 14,2017 by agreement for discovery compliance (McGuire,J) J Russo court reporter	McGuire
02/14/2017		Case awaiting 2 discovery reports, Case continued to April 3,2017 for compliance (Kelley Brown,J) FTR	Kelley



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

02/14/2017	13	Commonwealth's notice of discovery III	
04/03/2017		Case continued to June 6,2017 by agreement for trial assignment (P. Creedon,AC) FTR	Creedon
04/04/2017	14	General correspondence regarding Commonwealth's notice of discovery III	
04/04/2017	15	General correspondence regarding Commonwealth's notice of discovery IV	
06/01/2017	16	Commonwealth 's Notice of Discovery V	
06/01/2017	16.1	Commonwealth 's Notice of Discovery VI	
06/05/2017	17	Defendant 's Motion to suppress evidence	
06/06/2017		Event Result: Case continued to 8/8/17 by agreement on Non Evidentary Motion to Suppress. John Russo Court Reporter	Yessayan
07/14/2017	18	Commonwealth 's Notice of discovery VII	
08/08/2017	19	Defendant 's Motion to suppress evidence	
08/08/2017		Case continued to September 12, 2017 by agreement for motion to suppress (Moriarty, J.) C. Johnson, court reporter	Moriarty
08/31/2017	20	Commonwealth 's Notice of discovery VIII	
09/12/2017		Motion to suppress taken under advisement. Case continued to November 8m	Moriarty
09/12/2017	22	Defendant 's Motion to reconsider bail	
09/14/2017		Endorsement on Motion to suppress evidence, (#19.0): DENIED See memorandum of decision and order	Moriarty
09/14/2017	21	Findings of Fact and Rulings of Law:  and order on defendant's motion to suppress evidence seized pursuant to a search warrant: DENIED	Moriarty
09/14/2017		Endorsement on Motion to reconsider bail, (#22.0): ALLOWED Bail reduced to \$50,000.00. See memorandum.	Moriarty
09/14/2017		Bail set at \$0.00 Surety, \$50,000.00 Cash. CONDITIONS: GPS	Moriarty
09/15/2017	23	MEMORANDUM & ORDER:  on defendant's motion to reconsider bail:	Moriarty
09/15/2017	24	Notice sent to D.A and defense counsel to appear on November 21, 2017 re: final pre-trial conference	
09/15/2017	25	Notice sent to D.A and defense counsel to appear on December 5, 2017 re: trial	
09/15/2017	26	Notice sent to DA and defense counsel to appear on 11/8/17 re: motion to suppress	
09/15/2017	27	Issued on this date:  Mittimus in Lieu of Bail Sent On: 09/15/2017 15:36:23	



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

09/15/2017	28	Opposition to to defendant's motion to suppress filed by Plymouth County District Attorney	Moriarty
09/29/2017		Mittimus returned to court: SERVED	
11/08/2017		Motoin ; Held Matter taken under advisement and case continued to November 21,20176 for final pre-trial conference and December 5,2017 for trial second criminal session J Russo court reporter  Judge: Cosgrove, Hon. Robert C	Cosgrove
11/13/2017	30	Commonwealths list of potential witnesses	
11/13/2017	31	Commonwealths notice of expert witness	
11/13/2017	32	Commonwealths notice of expert witness	
11/14/2017	29	Opposition to Defendants motion to suppress filed by	
11/15/2017		Endorsement on Motion to suppress evidence, (#17.0): DENIED See memorandum of decision and order (Cosgrove,J)  Judge: Cosgrove, Hon. Robert C	Cosgrove
11/15/2017	33	MEMORANDUM & ORDER:  The defendants motion to suppress is DENIED (Cosgrove,J)  Judge: Cosgrove, Hon. Robert C  Judge: Cosgrove, Hon. Robert C	Cosgrove
11/21/2017	34	Defendant 's Motion to suppress evidence seized because of a search warrant execution in violation of the knock and announce requirment	
11/21/2017		Case continued to November 28,2017 for motion to suppress evidence in violation of the knock and announce requirement and December 5,2017 for trial (S Lalli Asst Clerk)	
11/27/2017		Event Result: Judge: Kelley Brown, Hon. Angel The following event: Evidentiary Hearing on Suppression scheduled for 11/28/2017 09:00 AM has been resulted as follows: Result: Canceled Reason: By Court prior to date	Kelley
11/28/2017	35	Defendant 's Motion for Individual Voir Dire Conducted By Counsel	
11/28/2017	36	Defendant 's Motion for Proposed Questions To Be asked To The Jury	
12/04/2017		Transcript received from John Russo regarding motion to suppress hearing on November 8, 2017	
12/05/2017		Case called for trial before Chin, J. Court orders impanelment of 14 jurors Court hears defendants motion to suppress. After hearing, motion taken under advisement by Chin, J. Trial continued to February 5, 2018. Jury released, never sworn (Chin, J.) B. St. Charles, court reporter	
12/05/2017	37	Commonwealth 's Motion in Opposition To Deft.'s Motion To Suppress.	





**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

12/05/2017	38.1	Joint Pre-Trial Memorandum filed:	
12/05/2017	38	Commonwealth's Notice Of Discovery 1X	
12/05/2017		Commonwealth oral motion to amend indictment #001 to read "over 100 grams but less than 200 grams" - ALLOWED (Chin, J.)	
12/07/2017	39	Notice to Parties of Trial By Jury February 5, 2018 in the second session.	
01/26/2018	40	Defendant 's Motion to continue trial	
01/31/2018		Endorsement on Motion to suppress evidence seized because of a search warrant execution in violation of the knock and announce requirement, (#34.0): DENIED See findings of fact, rulings of law and order.  Judge: Chin, Hon. Richard J	Chin
01/31/2018	41	Findings of Fact and Rulings of Law:  and order on Defendant's Motion to Suppress  It is therefore ORDERED that the defendant's motion to suppress evidence seized from his home on April 20, 2016, be DENIED.  Judge: Chin, Hon. Richard J  Judge: Chin, Hon. Richard J	Chin
02/01/2018		Case continued to March 19,2018 for jury trial in 2nd session (Chin,J) B. StCharles, court reporter  Judge: Chin, Hon. Richard J	Chin
02/01/2018		Event Result: Judge: Chin, Hon. Richard J The following event: Motion Hearing scheduled for 02/01/2018 09:00 AM has been resulted as follows: Result: Held as Scheduled	Chin
02/01/2018		Endorsement on Motion to continue trial, (#40.0): ALLOWED trial continued to March 19,2018 (Chin,J)  Judge: Chin, Hon. Richard J	Chin
02/02/2018	42	Notice sent to counsel & DA of March 19,2018 trial in 2nd session @ 9:00AM in Brockton	
02/13/2018	43	Correspondence from Deft. To Court	
02/16/2018	44	Defendant 's Motion to Motion to Withdraw as Counsel	
02/20/2018		Event Result: Judge: Chin, Hon. Richard J The following event: Jury Trial scheduled for 03/19/2018 09:00 AM has been resulted as follows: Result: Canceled Reason: Other event activity needed	Chin





**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

02/20/2018		Case continued to March 19,2018 for status bring defendant in (Chin,J) B. StCharles, court reporter  Judge: Chin, Hon. Richard J  Judge: Chin, Hon. Richard J	Chin
02/20/2018		Endorsement on Motion to withdraw as counsel, (#44.0): ALLOWED (Chin,J)  Judge: Chin, Hon. Richard J	Chin
02/20/2018		Attorney appearance On this date Frank H Spillane, Esq. dismissed/withdrawn as Private Counsel for Defendant Allah Jerome Mallory	
03/19/2018		Event Result: Judge: Chin, Hon. Richard J The following event: Conference to Review Status scheduled for 03/19/2018 09:00 AM has been resulted as follows: Result: Not Held Reason: Other event activity needed	Chin
03/26/2018		Attorney appearance On this date Lauren Marie McDonough, Esq. added for Defendant Allah Jerome Mallory	
03/26/2018		Appointment made for the purpose of Case in Chief by Judge Hon. Richard J Chin.	
04/02/2018	45	General correspondence regarding Appearance of Atty Lauren McDonough for defendant	
04/02/2018		Case continued to May 1,2018 for status  Judge: Lalli, Sharon	Lalli
04/25/2018		Event Result: Judge: Chin, Hon. Richard J The following event: Conference to Review Status scheduled for 05/01/2018 09:00 AM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date	Chin
05/07/2018		Event Result: Judge: Davis, Hon. Brian A The following event: Conference to Review Status scheduled for 05/07/2018 09:00 AM has been resulted as follows: Result: Held as Scheduled	Davis
06/01/2018		Event Result:: Conference to Review Status scheduled on: 06/01/2018 09:00 AM Has been: Held as Scheduled Hon. Richard J Chin, Presiding Appeared: Staff: Sharon Lalli, Assistant Clerk Magistrate	Chin



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

06/01/2018	47	Defendant 's EX PARTE Motion for funds for chemist filed ; ALLOWED (Chin,J)  Judge: Chin, Hon. Richard J	Chin
06/01/2018	48	Defendant 's EX PARTE Motion for funds to retain an investigator filed ; ALLOWED (Chin,J)  Judge: Chin, Hon. Richard J	Chin
06/04/2018	49	Document:  Notice to Appear for Final Pretrial on October 5,2018 @ 9:00AM in 2nd session @ Brockton Sent On: 06/04/2018 09:57:22	
06/04/2018	50	Notice sent to counsel & DA of October 5,2018 trial @ 9:00AM in 2nd session @ Brockton	
08/23/2018		Issued: Straight Warrant issued on 08/23/2018 for Mallory, Allah Jerome	
08/24/2018	51	Probation 's Motion Motion to Advance Filed and Allowed. Warrant to issue at request of probation	
09/10/2018	52	Surety 's Motion to advance	
09/10/2018		Case brought forward by surety. After hearing and the defendant being held in Federal Custody court orders bail to be returned to surety FTR  Judge: Moriarty, II, Hon. Cornelius J	Moriarty
09/10/2018		Bail set at \$0.00 Surety, \$50,000.00 Cash. with pre-trial probation conditions: GPS monitoring  Judge: Moriarty, II, Hon. Cornelius J Applies To: Mallory, Allah Jerome (Defendant); Plymouth County House of Correction (Holding Institution)	Moriarty
09/10/2018	53	Issued on this date:  Mittimus in Lieu of Bail Sent On: 09/10/2018 14:05:11	
10/05/2018		Defendant not brought into court; he is in federal custody. Attorney McDonough appears on his behalf. ADA Kennedy stands in for ADA Fahy. By agreement of the parties, the final pre-trial date is scheduled for January 4, 2019 at 9:00 a.m. and the jury trial date is rescheduled for January 28, 2019 at 9:00 a.m. (Kelley, J.) FTR.  Judge: Kelley, Hon. Angel	Kelley



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

10/05/2018		<p>Event Result:: Jury Trial scheduled on: 11/06/2018 09:00 AM</p> <p>Has been: Rescheduled For the following reason: Joint request of parties Hon. Angel Kelley, Presiding</p> <p>Appeared:</p> <p>Staff: Sharon Lalli, Assistant Clerk Magistrate</p>	Kelley
10/05/2018	55	<p>Document:</p> <p>Notice to Appear for Final Pretrial Sent On: 10/05/2018 14:40:51</p>	
01/02/2019		<p>Event Result:: Final Pre-Trial Conference scheduled on: 01/04/2019 09:00 AM</p> <p>Has been: Rescheduled For the following reason: By Court prior to date Hon. Angel Kelley, Presiding</p> <p>Appeared:</p> <p>Staff:</p>	Kelley
01/11/2019		<p>Case called before the Court. Defendant not brought in (in federal custody). Case continued to 2/13/19 for final pre-trial conference and 3/25/19 for trial. (Davis, J.) FTR</p>	Davis
01/11/2019		<p>Event Result:: Jury Trial scheduled on: 01/28/2019 09:00 AM</p> <p>Has been: Rescheduled For the following reason: By Court prior to date Hon. Brian A Davis, Presiding</p> <p>Appeared:</p> <p>Staff: Sharon Lalli, Assistant Clerk Magistrate</p>	Davis
01/11/2019		<p>Document:</p> <p>Notice to Appear for Final Pretrial Sent On: 01/11/2019 15:52:17</p>	
01/11/2019		<p>The following form was generated:</p> <p>Notice to Appear for Trial Sent On: 01/11/2019 15:57:54</p>	
02/12/2019		<p>Event Result:: Final Pre-Trial Conference scheduled on: 02/13/2019 09:00 AM</p> <p>Has been: Not Held For the following reason: Request of Commonwealth Hon. Brian A Davis, Presiding</p> <p>Appeared:</p> <p>Staff: Sharon Lalli, Assistant Clerk Magistrate</p>	Davis
03/22/2019		<p>Event Result:: Jury Trial scheduled on: 03/25/2019 09:00 AM</p> <p>Has been: Not Held For the following reason: By Court prior to date Hon. Brian A Davis, Presiding</p> <p>Appeared:</p> <p>Staff: Sharon Lalli, Assistant Clerk Magistrate</p>	Davis



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

03/25/2019		Defendant not present in court for status conference. Case called for status hearing regarding new trial date. ADA Fahey for the Commonwealth; Attorney McDonough for the defendant. Case continued to July 8, 2019 at 9AM for jury trial - 1st case out. Final trial conference scheduled for July 2, 2019 at 2PM - agreed upon date with counsel. Atty. McDonough objected generally to this trial being continued due to speedy trial issues. ADA Fahey will be responsible for bringing defendant in from federal custody, (Davis, J.) FTR.	Davis
03/27/2019	56	The following form was generated: A Notice to Appear (for Final Trial Conference) was generated and sent to: Defendant: Lauren Marie McDonough, Esq. Prosecutor: Brian S Fahy, Esq.	
03/27/2019	57	The following form was generated: A Notice to Appear (for Jury Trial) was generated and sent to: Defendant: Lauren Marie McDonough, Esq. Prosecutor: Brian S Fahy, Esq.	
05/06/2019	58	Pro Se Defendant 's Motion for speedy trial copies sent May 8,2019	
05/28/2019		Event Result:: Final Trial Conference scheduled on: 07/02/2019 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Angel Kelley, Presiding	Kelley
05/28/2019		Event Result:: Jury Trial scheduled on: 07/08/2019 09:00 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Angel Kelley, Presiding	Kelley
05/28/2019	59	The following form was generated:  Notice to Appear for Jury Trial on 8/19/19 at 9am to: Lauren McDonough, Esq. ADA Brian Fahy  Sent On: 05/28/2019 11:22:09	
06/10/2019	60	Pro Se Defendant 's Motion for writ of habeas corpus	
07/01/2019	61	Pro Se Defendant 's Motion for speedy trial copy sent July 2,2019	
07/09/2019	62	Habeas Corpus issued for defendant in federal custody at Plymouth County House of Correction for 07/19/2019 09:00 AM Final Trial Conference PLEASE HAVE DEFENDANT HERE BY 8:30AM.	Gildea
07/09/2019	63	Habeas Corpus issued for defendant in federal custody at Plymouth County House of Correction for 08/19/2019 09:00 AM Jury Trial PLEASE HAVE DEFENDANT HERE BY 8:30 AM.	Gildea
07/19/2019		Event Result:: Final Trial Conference scheduled on: 07/19/2019 09:00 AM Has been: Rescheduled For the following reason: Request of Commonwealth Hon. Mark Gildea, Presiding	Gildea
07/23/2019	63.1	Habeas Corpus issued for defendant in federal custody at Plymouth County House of Correction for 08/12/2019 09:00 AM Final Trial Conference	Gildea



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

41

08/12/2019		Defendant not brought into court; he is in federal custody. Attorney McDonough is in another court being held for trial. ADA Fahey reports that the Defendant will not be brought to court for the full week of trial by federal agents. Counsel will notify clerk of an agreed upon date later in the week for status, (Gildea, J.) FTR - 1st session courtroom.	Gildea
08/14/2019	64	Habeas Corpus issued for defendant in federal custody at Plymouth County House of Correction for 08/15/2019 09:00 AM Conference to Review Status	Gildea
08/15/2019		Defendant is not brought in from federal custody. Atty. McDonough and ADA Fahy present. Commonwealth reports that they are not ready for trial. Case continued to Monday, August 19, 2019 at 9am for trial, (Gildea, J.) FTR.	Gildea
08/15/2019	65	Habeas Corpus for defendant issued to Plymouth County House of Correction returnable for 08/19/2019 09:00 AM Jury Trial. SCHEDULE FOR VIDEO CONFERENCE AT 10:00 AM	
08/19/2019		Event Result:: Jury Trial scheduled on: 08/19/2019 09:00 AM Has been: Not Held For the following reason: Defendant not transported to event Hon. Mark Gildea, Presiding	Gildea
08/19/2019		Defendant not brought into court. Both attorneys present; Commonwealth reports Defendant will be brought to court Tuesday. Case continued to August 21, 2019 at 9am for jury trial, (Gildea, J.) FTR.	Gildea
08/19/2019	66	Habeas Corpus for defendant issued to Plymouth County House of Correction returnable for 08/20/2019 09:00 AM Jury Trial.	
08/19/2019	67	Defendant 's Motion in limine to Preclude Reference to the Defendant's Ineligible Status for Firearm Licensing	
08/19/2019	68	Defendant 's Motion in limine to Exclude Reference to a Warrant	
08/19/2019	69	Defendant 's Motion to Sequester	
08/19/2019	70	Defendant 's Motion in limine to Exclude Evidence Regarding a Domestic Violence Incident	
08/19/2019	70.1	Defendant 's Motion in limine to Preclude Admission of Defendant's Silence in Response to Police Questioning	
08/19/2019	70.2	Defendant 's Motion for voir dire of prospective jurors	
08/19/2019	70.3	Defendant 's Motion in limine to exclude evidence of the defendant's prior convictions	
08/19/2019	70.4	Witness list  Applies To: Mallory, Allah Jerome (Defendant)	
08/19/2019	70.5	Defendant 's Motion for discovery of evidence submission form and any other reports	
08/20/2019		Defendant comes into court. Commonwealth and Defendant report ready for trial. Case called for trial; ADA Fahy moves for trial. Defendant is set at the bar; venire is sworn. Impanelment begins. 14 jurors are seated and sworn. Indictments are read and opening statements are given. Testimony begins. Case continued to August 21, 2019 at 9am for trial, (Gildea, J.) FTR.	Gildea



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

08/20/2019	71	Defendant 's Motion to Dismiss for Lack of a Speedy Trial	
08/20/2019		Endorsement on Motion to dismiss for Lack of a Speedy Trial, (#71.0): DENIED after hearing, (Gildea, J.).  Judge: Gildea, Hon. Mark	Gildea
08/20/2019		Endorsement on Motion in limine to Exclude Evidence Regarding a Domestic Violence Incident, (#70.0): ALLOWED without objection, (Gildea, J.).	Gildea
08/20/2019		Endorsement on Motion to Sequester, (#69.0): ALLOWED without objection, (Gildea, J.).	Gildea
08/20/2019		Endorsement on Motion in limine to Exclude Reference to a Warrant, (#68.0): ALLOWED as discussed on the record(10:04), (Gildea, J.).	Gildea
08/20/2019		Endorsement on Motion in limine to Preclude Reference to the Defendant's Ineligible Status for Firearm Licensing, (#67.0): ALLOWED without objection, (Gildea, J.).  Judge: Gildea, Hon. Mark	Gildea
08/20/2019		Endorsement on Motion in limine to Preclude Admission of Defendant's Silence in Response to Police Questioning, (#70.1): ALLOWED without objection. (Defendant later seeks to withdraw), (Gildea, J.).  Judge: Gildea, Hon. Mark	Gildea
08/20/2019		Endorsement on Motion in limine to exclude evidence of the defendant's prior convictions, (#70.3): Other action taken Reserved (Gildea,J)  Judge: Gildea, Hon. Mark Applies To: Mallory, Allah Jerome (Defendant)	Gildea
08/20/2019	71.1	Witness list  Potential (Bifurcated portion of the trial )  Applies To: Plymouth County District Attorney (Prosecutor)	
08/20/2019	71.2	Joint Pre-Trial Memorandum filed:  Commonwealth's	
08/21/2019		Defendant brought into court. Testimony continues before Judge Gildea and 14 jurors. Commonwealth rests. Defense proceeds with evidence. Case continued to August 22, 2019 at 9am for continuation of trial, (Gildea, J.) FTR.	Gildea
08/21/2019	72	Defendant 's Motion for requiring finding of not guilty (at close of Commonwealth's case)	
08/21/2019		Endorsement on Motion for requiring finding of not guilty , (#72.0): DENIED , (Gildea, J.).  Judge: Gildea, Hon. Mark	Gildea



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

08/22/2019		Docket Note: Defendnat brought into court. Court holds hearing outside presence of jury. After hearing court orders capias to issue as to witness Pierre Jean -Louis	Gildea
		Judge: Gildea, Hon. Mark	
08/22/2019		Capias issued for Witness authorizing an arrest.	
		Applies To: Jean-Louis, Pierre (Witness)	
08/22/2019		Docket Note: Defendant sworn. Voire dire re: right not to testify	Gildea
		Judge: Gildea, Hon. Mark	
08/22/2019		Event Result:: Jury Trial scheduled on: 08/22/2019 09:00 AM Has been: Held as Scheduled. Trial continues before (Gildea,J) and 14 jurors Hon. Mark Gildea, Presiding	Gildea
08/22/2019		Docket Note: Defense rests	
08/22/2019		Defendant oral motion for required finding of not guilty at the close of all evidence Denied	Gildea
		Judge: Gildea, Hon. Mark	
08/22/2019	72.1	Defendant 's Motion for jury instructions	
08/23/2019		Event Result:: Jury Trial scheduled on: 08/23/2019 09:00 AM Has been: Held as Scheduled Comments: FTR Hon. Mark Gildea, Presiding	Gildea
08/26/2019		Event Result:: Jury Trial scheduled on: 08/26/2019 09:00 AM Has been: Held as Scheduled Comments: FTR Hon. Mark Gildea, Presiding	Gildea
08/26/2019	73.1	Defendant 's Motion for Voir Dire of Sitting Jury	





**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

08/26/2019		<p>Offense Disposition::</p> <p>Charge #1 HEROIN/MORPHINE/OPIUM, TRAFFICKING IN 100 GRAMS OR MORE, LESS THAN 200 GRAMS c94C §32E(c) 94C/32E/G-0</p> <p>On: 08/26/2019 Judge: Hon. Mark Gildea</p> <p>By: Jury Trial Guilty Verdict</p> <p>Charge #2 COCAINE, TRAFFICKING IN, 36 GRAMS OR MORE, LESS THAN 100 GRAMS c94C §32E(b)</p> <p>On: 08/26/2019 Judge: Hon. Mark Gildea</p> <p>By: Jury Trial Guilty Verdict</p> <p>Charge #3 FIREARM WITHOUT FID CARD, POSSESS c269 s.10(h)</p> <p>On: 08/26/2019 Judge: Hon. Mark Gildea</p> <p>By: Jury Trial Guilty Verdict</p> <p>Charge #5 FIREARM WITHOUT FID CARD, POSSESS c269 s.10(h)</p> <p>On: 08/26/2019 Judge: Hon. Mark Gildea</p> <p>By: Jury Trial Guilty Verdict</p> <p>Charge #7 FIREARM IN FELONY, POSSESS c265 §18B</p> <p>On: 08/26/2019 Judge: Hon. Mark Gildea</p> <p>By: Jury Trial Guilty Verdict</p>	
08/26/2019		Defendant notified of right of appeal to the Appeals Court within thirty (30) days.	
08/26/2019	73	The defendant/petitioner is committed without bail for the following reason: Per Order of the Court.	Gildea
		Judge: Gildea, Hon. Mark	
08/27/2019	74	Mittimus returned to court: UNSERVED	
08/28/2019		Recalled: Straight Warrant cancelled on 08/28/2019 for Mallory, Allah Jerome	
08/29/2019		<p>Event Result:: Jury Trial scheduled on:</p> <p>08/29/2019 09:00 AM</p> <p>Has been: Held as Scheduled</p> <p>Comments: Jurors unavailable this day. Jury trial does not go forward this day</p> <p>Hon. Mark Gildea, Presiding</p>	Gildea
08/29/2019	75	Defendant 's Motion in limine to exclude Pen Pack and the testimony of Jaime Lewis	
08/29/2019	76	Defendant 's Motion in limine to preclude testimony of alleged vicitms and fact witnesses from the defendant's predicate convictions	
08/29/2019	77	Defendant 's Motion in limine to exclude any evidence related to vacated conviction	
09/03/2019		<p>Event Result:: Jury Trial scheduled on:</p> <p>09/03/2019 09:00 AM</p> <p>Has been: Held as Scheduled</p> <p>Comments: FTR</p> <p>Hon. Mark Gildea, Presiding</p>	Gildea





**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

09/03/2019		Endorsement on Motion in limine to exclude pen pack and the testimony, (#75.0): Other action taken reserved (Gildea,J)	Gildea
		Judge: Gildea, Hon. Mark	
09/03/2019		Endorsement on Motion in limine to exclude any evidence related to vacated conviction, (#77.0): ALLOWED without objection (Gildea,J)	Gildea
		Judge: Gildea, Hon. Mark	
09/03/2019	78	Commonwealth 's Motion in limine to admit in court identification pursuant to Commonwealth v Crayton; Reserved until witnesses are testifying (Gildea,J)	Gildea
		Judge: Gildea, Hon. Mark	
09/03/2019	79	Opposition to defendant's motions in limine (Testimony re predicate offenses) filed by	
		Applies To: Plymouth County District Attorney (Prosecutor)	
09/03/2019		Defendant arraigned before Court. of offenses 004,006	Gildea
		Judge: Gildea, Hon. Mark	
09/03/2019		Impanelment of jurors on this date	Gildea
		10 jurors Commonwealth & Counsel both use 2 challenges . Defendant to be returned pursuant to agents with federal custody. Case continued to tomorrow (Gildea,J) FTR	
		Judge: Gildea, Hon. Mark	
09/04/2019		Jury impanelment continues, total of 14 seated jurors. Trial continues before Judge & jurors (Gildea,J) FTR	Gildea
09/04/2019		Endorsement on Motion in limine to exclude pen pack and the testimony of Jamie Lewis, (#75.0): Other action taken Deemed moot as Commonwealth does not seek to introduce evidence (Gildea,J)	Gildea
		Judge: Gildea, Hon. Mark	
09/04/2019		Endorsement on Motion in limine to preclude testimony of alleged victims and fact witnesses from the defendant's predicate convictions, (#76.0): DENIED (Gildea,J)	Gildea
		Judge: Gildea, Hon. Mark	
09/04/2019		Attorney appearance On this date Ryan Matthews, Esq. added as Appointed - Witness G.L. c. 233 §20E(b) for Witness Tanya O' Brien Appointment made for the purpose of Witness in a criminal investigation / case by Judge Hon. Mark Gildea.	
09/05/2019		Trial continues before Judge Gildea & Jurors (Gildea,J) FTR	Gildea



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

09/05/2019		Defendant's oral motion to enter transcript from previous trial; ALLOWED over the objection of the commonwealth (Gildea,J) FTR	Gildea
09/05/2019	80	Defendant 's Motion for requiring finding of not guilty After hearing DENIED (Gildea,J)  Judge: Gildea, Hon. Mark	Gildea
09/05/2019	81	General correspondence regarding Notice of appearance of Ryan Matthews for witness Tanya O'Brien	
09/10/2019		Event Result:: Hearing for Sentence Imposition scheduled on: 09/10/2019 09:00 AM Has been: Held as scheduled Comments: FTR Hon. Mark Gildea, Presiding	Gildea
09/10/2019		Offense Disposition:: Charge #1 HEROIN/MORPHINE/OPIUM, TRAFFICKING IN 100 GRAMS OR MORE, LESS THAN 200 GRAMS c94C §32E(c) 94C/32E/G-0 On: 08/26/2019 Judge: Hon. Mark Gildea By: Jury Trial Guilty Verdict  Charge #2 COCAINE, TRAFFICKING IN, 36 GRAMS OR MORE, LESS THAN 100 GRAMS c94C §32E(b) On: 08/26/2019 By: Jury Trial Guilty Verdict  Charge #3 FIREARM WITHOUT FID CARD, POSSESS c269 s.10(h) On: 08/26/2019 By: Jury Trial Guilty Verdict  Charge #4 FIREARM VIOL WITH 3 PRIOR VIOLENT/DRUG CRIMES c269 §10G(c) On: 09/03/2019 Judge: Hon. Mark Gildea By: Arraignment Guilty Verdict  Charge #5 FIREARM WITHOUT FID CARD, POSSESS c269 s.10(h) On: 08/26/2019 By: Jury Trial Guilty Verdict  Charge #6 FIREARM VIOL WITH 3 PRIOR VIOLENT/DRUG CRIMES c269 §10G(c) On: 09/03/2019 Judge: Hon. Mark Gildea By: Arraignment Guilty Verdict  Charge #7 FIREARM IN FELONY, POSSESS c265 §18B On: 08/26/2019 By: Jury Trial Guilty Verdict	



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

09/10/2019		<p>Defendant sentenced:: Sentence Date: 09/10/2019 Judge: Hon. Mark Gildea</p> <p>Charge #: 1 HEROIN/MORPHINE/OPIUM, TRAFFICKING IN 100 GRAMS OR MORE, LESS THAN 200 GRAMS c94C §32E(c) State Prison Sentence Not Less Than: 10 Years, 0 Months, 0 Days Not More Than: 14 Years, 0 Months, 0 Days Served Concurrently</p> <p>Charge #: 2 COCAINE, TRAFFICKING IN, 36 GRAMS OR MORE, LESS THAN 100 GRAMS c94C §32E(b) State Prison Sentence Not Less Than: 5 Years, 0 Months, 0 Days Not More Than: 7 Years, 0 Months, 0 Days Served Concurrently</p> <p>Charge #: 3 FIREARM WITHOUT FID CARD, POSSESS c269 s.10(h) State Prison Sentence Not Less Than: 16 Years, 0 Months, 0 Days Not More Than: 18 Years, 0 Months, 0 Days</p> <p>Charge #: 4 FIREARM VIOL WITH 3 PRIOR VIOLENT/DRUG CRIMES c269 §10G(c) State Prison Sentence Not Less Than: 16 Years, 0 Months, 0 Days Not More Than: 18 Years, 0 Months, 0 Days Served Concurrently</p> <p>Charge #: 5 FIREARM WITHOUT FID CARD, POSSESS c269 s.10(h) State Prison Sentence Not Less Than: 16 Years, 0 Months, 0 Days Not More Than: 18 Years, 0 Months, 0 Days Served Concurrently</p> <p>Charge #: 6 FIREARM VIOL WITH 3 PRIOR VIOLENT/DRUG CRIMES c269 §10G(c) State Prison Sentence Not Less Than: 16 Years, 0 Months, 0 Days Not More Than: 18 Years, 0 Months, 0 Days Served Concurrently</p> <p>Charge #: 7 FIREARM IN FELONY, POSSESS c265 §18B State Prison Sentence Not Less Than: 5 Years, 0 Months, 0 Days Not More Than: 7 Years, 0 Months, 0 Days Served Concurrently</p> <p>Committed to MCI - Cedar Junction (at Walpole) Credits 746 Days</p>	
09/10/2019	82	<p>Defendant 's Motion for requiring finding of not guilty after discharge of the jury; After hearing DENIED (Gildea,J) FTR</p> <p>Judge: Gildea, Hon. Mark</p>	Gildea
09/10/2019	83	<p>General correspondence regarding Commonwealth's sentencing memorandum</p> <p>Judge: Gildea, Hon. Mark</p>	Gildea



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

09/10/2019	84	General correspondence regarding Memorandum in aid of sentencing  Judge: Gildea, Hon. Mark	Gildea
09/10/2019	85	Verdict affirmed, verdict slip filed  004,006  Judge: Gildea, Hon. Mark	Gildea
09/10/2019	86	Issued on this date:  Mittimus for Sentence (All Charges) Sent On: 09/10/2019 12:23:08  \$90.00 VWF WAIVED (Gildea,J)	
09/10/2019		Defendant notified of right of appeal to the Appellate Division of the Superior Court within ten (10) days. Judge: Gildea, Hon. Mark	Gildea
09/10/2019	87	Defendant notified of right of appeal to the Appeals Court within thirty (30) days. Judge: Gildea, Hon. Mark	Gildea
09/10/2019		Disp for statistical purposes	
09/12/2019	88	Notice of appeal filed.  Applies To: Mallory, Allah Jerome (Defendant)	
09/16/2019	89	Notice sent to counsel re: notice of appeal filed	
09/18/2019	90	Notice of appeal from sentence to MCI - Cedar Junction (at Walpole) filed by defendant	
09/18/2019		Notification to the Appellate Division sent.	
09/20/2019		Case sent to Plymouth Superior - PLYMOUTH Location. (RE: Appeal from sentence to Massachusetts Correctional Institution Cedar Junction filed on Sept 18,2019)	
09/24/2019	91	Letter to the Appellate Division cc: BF, LM, and probation Sent On: 09/24/2019 09:57:25	
09/24/2019		Case sent to Plymouth Superior - BROCKTON Location.	
10/07/2019		Attorney appearance On this date Lauren Marie McDonough, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Allah Jerome Mallory	
10/07/2019	92	Attorney appearance On this date Matthew D Spurlock, Esq. added as Appointed - Appellate Action for Defendant Allah Jerome Mallory	
10/24/2019		Appeal for review of sentence entered at the Appellate Division: Originating Court: Plymouth County Receiving Court: Suffolk County Criminal Case Number: 1984AD393-PL ;	



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

01/03/2020		CD of Transcript of 09/10/2018 09:00 AM Motion Hearing, 01/11/2019 09:00 AM Final Pre-Trial Conference, 03/25/2019 09:00 AM Conference to Review Status, 08/12/2019 09:00 AM Final Trial Conference, 08/15/2019 09:00 AM Conference to Review Status, 08/19/2019 09:00 AM Conference to Review Status, 08/20/2019 09:00 AM Jury Trial, 08/21/2019 09:00 AM Jury Trial, 08/22/2019 09:00 AM Jury Trial, 08/23/2019 09:00 AM Jury Trial, 08/26/2019 09:00 AM Jury Trial, 08/29/2019 09:00 AM Jury Trial, 09/03/2019 09:00 AM Jury Trial, 09/04/2019 09:00 AM Jury Trial, 09/05/2019 09:00 AM Jury Trial, 09/10/2019 09:00 AM Hearing for Sentence Imposition received from FTR-Shari Riemer.
05/14/2020		CD of Transcript of 12/05/2017 09:00 AM Jury Trial, 02/01/2018 09:00 AM Motion Hearing received from Barbara St. Charles.
05/20/2020		CD of Transcript of 09/12/2017 09:00 AM Non-Evidentiary Hearing on Suppression, 11/08/2017 09:00 AM Evidentiary Hearing on Suppression received from John Russo.
10/06/2020	93	One (1) copy of docket entries, original copy of transcript, one (1) copy of notice of assembly issued to parties, one (1) copy of exhibit list and list of documents, and copy of the notice of appeal, each transmitted electronically to clerk of appellate court
10/06/2020	94	Notice to Clerk of the Appeals Court of Assembly of Record
10/06/2020	95	Notice of assembly of record sent to Counsel
10/06/2020	96	Appeal entered in Appeals Court on 10/06/2020 docket number 2020-P-1133
10/21/2020	97	Notice of docket entry received from Appeals Court RE#4: The defendant is granted leave to file, and the trial court to consider, a motion for new trial. Appellate proceedings stayed to 11/23/2020. Status report due then as to the filing and disposition of the motion.
02/08/2021	99	Defendant 's Motion For New Trial Case sent to Plymouth - Hallal,J
02/10/2021	98	Notice of docket entry received from Appeals Court RE#7: Appellate proceedings stayed to 3/8/2021. Status report due then regarding disposition of the new trial motion recently filed in the trial court.
02/17/2021	100	Defendant 's Motion for Discovery pursuant to Mass. R. Crim. P. 30
03/04/2021		Case sent to Plymouth Superior - BROCKTON Location.
03/04/2021		Notice to Justice, ADA and defense counsel of defendant's motion for a new trial and motion for discovery
03/05/2021	101	Defendant 's Motion to issue process for subpoena ad testificandum and subpoena duces tecum pursuant to G.L.c 233(13) & Mass.R.Crim.P.30(d)(4) with affidavit of counsel in support, certificate of materiality  4/16/21 - Emailed to J.Gildea
03/05/2021	102	Affidavit of of Allah Mallory to disclose Google Account Records of Allah Mallory



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

03/08/2021	103	Notice of docket entry received from Appeals Court RE#8: Appellate proceedings stayed to 04/08/2021. Status report due then regarding disposition of the defendant's new trial motion.	
03/18/2021	104	Order from Appellate Division of the Superior Court for the Review of Sentence it is ORDERED:  That the judgments imposing said sentences stand and that said appeal be and is hereby dismissed.	
04/08/2021	105	Notice of docket entry received from Appeals Court RE#9: Appellate proceedings stayed to 05/12/2021. Status report due then regarding disposition of the defendant's new trial motion.	
04/13/2021	106	ORDER: Commonwealth has 30 days to file opposition to motion for new trial  Judge: Gildea, Hon. Mark	Gildea
04/26/2021	107	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 04/29/2021 09:00 AM Conference to Review Status. **HEARING TO BE HELD VIA ZOOM** ** ZOOM ID: 160 4848 5585	
04/29/2021	108	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 05/03/2021 09:00 AM Conference to Review Status. **HEARING TO BE HELD VIA ZOOM. ZOOM ID 160 901 7188**	
04/29/2021		Event Result:: Conference to Review Status scheduled on: 04/29/2021 09:00 AM Has been: Held as Scheduled Comments: Case continued to May 3, 2021 at 9:00am in the 3rd criminal session via Zoom before Gildea, J. Hon. Mark Gildea, Presiding	Gildea
04/29/2021	109	Defendant 's Motion for Mass R. Crim P. 30 summons; filed and allowed (Gildea,J)	
04/29/2021	110	Defendant 's Motion Motion For Mass. R. Crim. P. 30 Summons	
05/03/2021		Event Result:: Conference to Review Status scheduled on: 05/03/2021 09:00 AM Has been: Held as Scheduled Comments: 1. Commonwealth to issue request to Police for records.  2. Motion for records of Google (paper 101) is allowed)  3. Portions of this hearing were not recorded as the FTR system crashed mid hearing.  Case continued to June 11 2021 at 9:00 for further status. Hon. Mark Gildea, Presiding	Gildea
05/10/2021	110	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 05/11/2021 09:00 AM Conference to Review Status. **HEARING TO BE HELD VIA ZOOM. ZOOM ID: 160 901 7188	



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

05/11/2021		<p>Event Result:: Conference to Review Status scheduled on: 05/11/2021 09:00 AM Has been: Held as Scheduled Comments: 1. Court reconstructs the portions of the record that were not recorded on the last date due to a failure in FTR.</p> <p>2. Court orders that the Certificate of Materiality for the "google" records be executed and sent to counsel for service upon google.</p> <p>3. Court orders that the R.30 records order upon Verizon be executed and issued. Hon. Mark Gildea, Presiding</p>	Gildea
05/13/2021	111	Finding by Court: Certificate of materiality of judge of the Commonwealth of Massachusetts to secure attendance or documents from out of state witness, custodian of records, Google LLC, to testify in criminal prosecution in Massachusetts	Gildea
05/13/2021	112	ORDER for Cell Phone Records for from Verizon	Gildea
05/13/2021	113	<p>Notice and Summons (Dwyer) issued to Keeper of Records Verizon of to produce records by 06/11/2021 to the Clerk of the Superior Court. Subscriber Records: Monthly charge and billing records for the mobile numbers, (508) 933-5969 (account # 988467665-0001) and (508) 930-5472 (account #988467665-001):</p> <p>1. (508) 933-5969: Billing records including for incoming and outgoing calls for the months of March and April 2016.</p> <p>2. (508) 930-5472: Billing records including for incoming and outgoing calls for the months of March and April 2016.</p> <p>Judge: Gildea, Hon. Mark</p>	Gildea
05/21/2021	114	Commonwealth 's Memorandum in OPPOSITION to the Defendant's motion for a new trial	
06/08/2021	115	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 06/11/2021 09:00 AM Conference to Review Status. Via Zoom, Zoom ID 160 901 7188	
06/09/2021		Docket Note: On May 21, 2021, Brockton Police file a sealed envelope containing material related to defendant's post trial discovery. Due to the nature of that information, the envelope is left sealed and is locked in the office safe. On June 10, 2021, the documents were delivered in hand to Judge Gildea in Barnstable Superior Court still sealed in the envelope.	Griffin





**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

06/11/2021		<p>Event Result:: Conference to Review Status scheduled on: 06/11/2021 09:00 AM Has been: Held as Scheduled Comments: Google has responded that there are no records responsive to that request.</p> <p>Case continued to review the other documetnation in person in Plymouth. Judge Gildea will review his schedule and provide a best date to be distributed to counsel. Hon. Mark Gildea, Presiding</p>	Gildea
06/14/2021		Business Records received from Google Inc.	
07/23/2021	116	<p>MEMORANDUM &amp; ORDER:</p> <p>for the foregoing reasons, it is ORDERED that the Defendant's motion for a new trial be DENIED</p> <p>Judge: Gildea, Hon. Mark</p> <p>7/23/21 cc: B.F. &amp; M.S.</p>	Gildea
07/23/2021		<p>Endorsement on Defendant's motion for new trial, (#99.0): DENIED</p> <p>Judge: Gildea, Hon. Mark</p>	Gildea
07/23/2021	117	Defendant 's Reply to the Commonwealth's opposition to the Defendant's Motion for a New Trial	
08/19/2021	118	Defendant 's Motion for reconsideration third affidavit of post-conviction counsel, memorandum in support	
10/08/2021	119	Defendant 's Motion for Discovery - RENEWED AND AMENDED (Sent to J. Gildea in Barnstable)	
10/29/2021		Case sent to Plymouth Superior - BROCKTON Location.	
11/08/2021	120	<p>Notice of docket entry received from Appeals Court With respect to the Motion of Appellant to stay appellate proceedings filed for Allah Jerome Mallory by Attorney Matthew Spurlock. (Paper #15), on November 8, 2021, the following order entered on the docket: RE#15: The status report is accepted for filing. Appellate proceedings are further stayed to 01/10/2022 by when a status report is due concerning disposition of the defendant's motions for reconsideration of the denial of his new trial motion and for post-conviction discovery.</p>	
01/10/2022	121	<p>Notice of docket entry received from Appeals Court RE#16: Appellate proceedings are further stayed to 02/09/2022, by when a status report is due concerning the disposition of the motions pending in the trial court.</p>	
02/10/2022	122	<p>Habeas Corpus for defendant issued to MCI - Norfolk returnable for 02/11/2022 02:00 PM Motion Hearing. Hearing to be held via Zoom: Meeting ID: 160.563.3573 / NO PW</p>	





**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

02/11/2022		<p>Event Result:: Motion Hearing scheduled on: 02/11/2022 02:00 PM Has been: Held as Scheduled</p> <p>Comments:</p> <p>Court conducts a Zoom conference. Recorded in the 2nd Criminal Session in Brockton. Defendant is present in Zoom. ADA Herron and Atty Spurlock present by Zoom. Judge Gildea also present by Zoom.</p> <p>Counsel reiterates the state of the case from his perspective and for the benefit of ADA Herron who is newly appearing on the matter and the court orders a hearing on March 17, 2021 at 2:00 in person on the pending motion for post trial discovery.</p> <p>Hon. Mark Gildea, Presiding</p>	Gildea
02/15/2022	123	<p>Notice of docket entry received from Appeals Court RE #17: Appellate proceedings are further stayed to 3/11/2022, by when a status report is due concerning the disposition of the motions pending in the trial court, including whether the hearing occurred on 2/11/22 as anticipated. (Ent 2/9/22)</p>	
03/10/2022	124	<p>Habeas Corpus for defendant issued to MCI - Norfolk returnable for 03/17/2022 02:00 PM Motion Hearing. Please transport defendant IN PERSON</p>	
03/16/2022	125	<p>Opposition to to the defendant's motion to reconsider the denial of the defendant's motion for new trial filed by Commonwealth</p>	
03/17/2022		<p>Matter taken under advisement: Motion Hearing scheduled on: 03/17/2022 02:00 PM Has been: Held - Under advisement Comments: FTR Hon. Mark Gildea, Presiding</p>	Gildea
03/23/2022	126	<p>Matthew D Spurlock, Esq.'s Supplemental, Memorandum in support of discovery motions</p>	
04/11/2022	127	<p>Notice of docket entry received from Appeals Court With respect to the Status Report filed for Allah Jerome Mallory by Attorney Matthew Spurlock (Paper #19), on April 11, 2022, the following entry was made on the docket: RE#19: Appellate proceedings are further stayed to 5/11/22, by when a status report is due concerning the disposition of the motions pending in the trial court, following the 3/17/22 hearing on the motions and subsequent filing of supplemental memoranda. Notice/attest</p>	



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

05/13/2022	128	<p>Notice of docket entry received from Appeals Court RE: No. 2022-P-1133 Please take note that, with respect to the Status Report filed for Allah Jerome Mallory by Attorney Matthew Spurlock (Paper #20), on May 13, 2022, the following entry was made on the docket of the above-referenced case: RE#20: Appellate proceedings STAYED to 6/10/2022. Status report due then concerning the disposition of the motions pending in the trial court, following the 3/17/2022 hearing on the motions and subsequent filing of supplemental memoranda. *Notice/attest.</p>	
06/13/2022	129	<p>Notice of docket entry received from Appeals Court with respect to the Status Report filed for Allah Jerome by Attorney Matthew Spurlock (paper #21), on June 13, 2022, the following entry was made: RE#21: Appellate proceedings STAYED to 07/11/22. Status report due then concerning the disposition of the motions pending in the trial court, following the 03/17/22 hearing on the motions and subsequent filing of supplemental memoranda.</p>	
07/11/2022	130	<p>Notice of docket entry received from Appeals Court RE#22: Appellate proceedings STAYED to 08/11/2022. Status report due then concerning the disposition of the motions pending in the trial court.</p>	
08/09/2022	131	<p>Notice of docket entry received from Appeals Court RE#23: Appellate proceedings STAYED to 09/12/2022. Status report due then concerning the disposition of the motions pending in the trial court. *Notice/attest/Gildea, J.</p>	
08/10/2022	132	<p>ORDER: The defendant's motion is ALLOWED and the parties shall appear for hearing on the defendant's Motion for New Trial, as scheduled by the clerk's office copies sent Aug 10,2022</p> <p>Judge: Gildea, Hon. Mark</p>	Gildea
08/10/2022	133	<p>Notice sent to counsel about motion hearing before Judge Gildea in Barnstable Superior Court scheduled for September 22,2022 at 2:00PM</p>	
08/10/2022	134	<p>Habeas Corpus for defendant issued to MCI - Norfolk returnable for 09/22/2022 02:00 PM Motion Hearing. IN PERSON HEARING BE THERE BY 1:00PM BEFORE JUDGE GILDEA IN BARNSTABLE SUPERIOR COURT</p>	
09/19/2022	135	<p>Habeas Corpus for defendant issued to MCI - Concord returnable for 09/22/2022 02:00 PM Motion Hearing. IN PERSON HEARING BE THERE BY 1:00PM BEFORE JUDGE GILDEA IN BARNSTABLE SUPERIOR COURT</p>	
09/20/2022		<p>Event Result:: Motion Hearing scheduled on: 09/22/2022 02:00 PM Has been: Canceled For the following reason: By Court prior to date Comments: Judge Gildea on trial. Hon. Mark Gildea, Presiding</p>	Gildea



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

09/21/2022	136	<p>Notice Preceding Dismissal from the Appeals Court</p> <p>In accordance with Massachusetts Appeals Court Rule 19.0 Dismissals of Appeals and Reports in all Cases for Lack of Prosecution (copy enclosed), you are hereby given notice that the above-referenced appeal shall be dismissed for lack of prosecution for the following reasons: Brief/appendix not received or status report not filed. Please note that the appeal is not dismissed at this time, but should no action be taken as outlined in M.A.C. Rule 19.0 (a)-(b) the dismissal process will move forward in 21 days from the date of issuance of this notice.</p>
10/06/2022	137	<p>Notice of docket entry received from Appeals Court</p> <p>RE#24: Appellate proceedings STAYED to 11/10/2022. Status report due then concerning the disposition of the motions pending in the trial court.</p>
10/17/2022		<p>Attorney appearance</p> <p>On this date Jason David Herron, Esq. added as Attorney for the Commonwealth for Prosecutor Plymouth County District Attorney</p>
10/17/2022		<p>Attorney appearance</p> <p>On this date Brian S Fahy, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Plymouth County District Attorney</p>
11/10/2022	138	<p>Notice of Entry of appeal received from the Appeals Court</p> <p>RE#25: Appellate proceedings STAYED to 12/12/2022. Status report due then concerning the disposition of the motions pending in the trial court. Notice/attest/Gildea, J.</p>
12/08/2022		<p>Event Result:: Hearing on Motion for New Trial scheduled on: 12/09/2022 10:00 AM <span style="float: right;">Gildea</span></p> <p>Has been: Canceled For the following reason: By Court prior to date</p> <p>Comments: Judge Gildea unavailable. Hearing moved to 1/27/23 at 9:00. Hon. Mark Gildea, Presiding</p>
12/13/2022	139	<p>Notice of docket entry received from Appeals Court</p> <p>RE#26: Appellate proceedings STAYED to 01/13/2023. Status report due then concerning the disposition of the motions pending in the trial court, heard on 03/17/2022. Notice/attest/Gildea, J.</p>
01/23/2023	140	<p>Habeas Corpus for defendant issued to MCI - Concord returnable for 01/27/2023 09:00 AM Hearing on Motion for New Trial.</p>
01/25/2023		<p>Event Result:: Hearing on Motion for New Trial scheduled on: 01/27/2023 09:00 AM <span style="float: right;">Gildea</span></p> <p>Has been: Rescheduled For the following reason: By Court prior to date</p> <p>Comments: Moved to 2/1/23 at 10:00 AM</p> <p>Hon. Mark Gildea, Presiding</p>
01/25/2023	141	<p>Habeas Corpus for defendant issued to MCI - Cedar Junction (at Walpole) returnable for 02/01/2023 10:00 AM Motion Hearing. PLEASE TRANSPORT DEFENDANT TO COURT BY 9:00 A.M.</p>
01/31/2023	142	<p>Habeas Corpus for defendant issued to MCI - Concord returnable for 02/01/2023 10:00 AM Motion Hearing. PLEASE TRANSPORT DEFENDANT TO COURT BY 9:00 A.M.</p>



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

02/01/2023		Event Result:: Motion Hearing scheduled on: 02/01/2023 10:00 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. William F Sullivan, Presiding	Sullivan
02/15/2023		Event Result:: Conference to Review Status scheduled on: 02/15/2023 03:00 PM Has been: Held as Scheduled Hon. Mark Gildea, Presiding	Gildea
03/06/2023		Event Result:: Hearing on Motion for New Trial scheduled on: 03/10/2023 09:00 AM Has been: Rescheduled For the following reason: By Court prior to date Conrod Boone, Presiding	Boone
03/07/2023		Event Result:: Hearing on Motion for New Trial scheduled on: 03/24/2023 09:00 AM Has been: Rescheduled For the following reason: Request of Commonwealth Conrod Boone, Presiding	Boone
03/14/2023		Event Result:: Hearing on Motion for New Trial scheduled on: 03/28/2023 09:00 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. William F Sullivan, Presiding	Sullivan
03/23/2023	143	Habeas Corpus for defendant issued to MCI - Concord returnable for 03/28/2023 09:00 AM Hearing on Motion for New Trial. PLEASE TRANSPORT DEFENDANT TO COURT	
03/27/2023	143.1	Notice of docket entry received from Appeals Court RE#29: Appellate proceedings STAYED to 05/22/2023. Status report due then or within 7 days of disposition of the motions pending in the trial court, whichever date is sooner.	
03/28/2023		Event Result:: Hearing on Motion for New Trial scheduled on: 03/28/2023 09:00 AM Has been: Held as Scheduled Hon. Mark Gildea, Presiding	Gildea
03/28/2023	144	Habeas Corpus for defendant issued to MCI - Concord returnable for 04/21/2023 09:00 AM Conference to Review Status. be here by 8:30am  Applies To: Mallory, Allah Jerome (Defendant); MCI - Concord (Holding Institution)	
03/28/2023	145	Habeas Corpus for defendant issued to MCI - Concord returnable for 05/26/2023 09:00 AM Hearing on Motion for New Trial. Be here by 8:30am  Applies To: Mallory, Allah Jerome (Defendant); MCI - Concord (Holding Institution)	
04/20/2023		Event Result:: Conference to Review Status scheduled on: 04/21/2023 09:00 AM Has been: Rescheduled For the following reason: By Court prior to date Conrod Boone, Presiding	Boone



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

04/20/2023	146	Habeas Corpus for defendant issued to MCI - Concord returnable for 05/19/2023 10:00 AM Conference to Review Status. Please be here by 9:00am	
05/18/2023		Event Result:: Conference to Review Status scheduled on: 05/19/2023 10:00 AM Has been: Not Held For the following reason: Not reached by Court Hon. Mark Gildea, Presiding	Gildea
05/25/2023		Event Result:: Hearing on Motion for New Trial scheduled on: 05/26/2023 09:00 AM Has been: Not Held For the following reason: Transferred to another session Hon. Mark Gildea, Presiding	Gildea
05/26/2023	146.1	RESTRICTED INFORMATION - Confidential Discovery (SEALED)  (Given to Gildea, J. 5/26/23)	
05/26/2023	147	RESTRICTED INFORMATION - Allah Jerome Mallory's Memorandum in support of new trial (supplemental)  (Given to Gildea, J. 5/26/23)	
05/26/2023		Event Result:: Hearing on Motion for New Trial scheduled on: 05/26/2023 10:00 AM Has been: Held as Scheduled Comments: Commonwealth filed documents under seal Defendant filed impounded supplemental pleading for motion for new trial. Commonwealth to provide additional documentation under seal to the Court. Matter continued for evidentiary "Franks" hearing to June 26, 2023 at 2:00p.m. before Gildea, J. at Plymouth Superior Court Habe to issue to MCI Concord Hon. Mark Gildea, Presiding	Gildea
05/26/2023	148	Habeas Corpus for defendant issued to MCI - Concord returnable for 06/26/2023 02:00 PM Hearing on Motion for New Trial. (Franks Hearing)	Gildea
06/05/2023	148.1	Attorney appearance On this date Jason Green, Esq. added as Private Counsel for Defendant Allah Jerome Mallory	
06/07/2023		Event Result:: Hearing on Motion for New Trial scheduled on: 06/26/2023 02:00 PM Has been: Rescheduled For the following reason: Transferred to another session Hon. Mark Gildea, Presiding	Gildea
06/13/2023		Event Result:: Hearing on Motion for New Trial scheduled on: 06/26/2023 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Mark Gildea, Presiding	Gildea
06/13/2023	149	Habeas Corpus for defendant issued to MCI - Concord returnable for 07/18/2023 10:00 AM Hearing on Motion for New Trial.	



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

06/29/2023	150	Defendant 's Motion to Clarify the Protective Order	
07/14/2023	151	Opposition to providing further documents under seal filed by Commonwealth	
07/14/2023	152	Commonwealth 's Response to the Defendant's motion to clarify protective order	
07/17/2023	153	Habeas Corpus for defendant issued to MCI - Concord returnable for 07/18/2023 10:00 AM Hearing on Motion for New Trial. Please be here by 9:00am	
07/18/2023	154	Defendant 's Response to the Commonwealth's untimely opposition and motion to reconsider the court's order to produce documents for in camera review	
07/18/2023		After hearing case continued to 08/29/2023 at 2:00 p.m. for Motion Hearing. Commonwealth's argument is due by 08/06/2023. (Gildea, J) (FTR)	Gildea
07/20/2023	155	Defendant 's Motion for funds for expedited transcript of sealed Franks hearing	
07/21/2023	156	Court Reporter FTR is hereby notified to prepare one copy of the transcript of the evidence of 07/18/2023 10:00 AM Hearing on Motion for New Trial	
07/24/2023	157	ORDER: for expedited transcript of sealed hearing  Judge: Gildea, Hon. Mark	Gildea
08/04/2023		RESTRICTED INFORMATION - CD of Transcript of 07/18/2023 10:00 AM Hearing on Motion for New Trial received from Susan Lobie, CET.	
08/29/2023		Case continued by agreement to August 30, 2023 at 3:30 p.m. for further hearing regarding exhibits	Gildea
08/30/2023		Commonwealth and defendant shall file any supplemental memoranda no later than 9/29/23 Case continued by agreement to October 5, 2023 at 2:30 p.m. for hearing	Gildea
09/29/2023	158	Defendant's Memorandum in Support of Franks Motion	
09/29/2023	159	Commonwealth 's memorandum in opposition to the defendant's motion for new trial (filed under seal)	
09/29/2023	160	Defendant 's memorandum in support of Frank's Motion (Filed under seal)	
10/04/2023	161	Habeas Corpus for defendant issued to MCI - Concord returnable for 10/05/2023 02:30 PM Motion Hearing.	
10/05/2023		Matter taken under advisement: Motion Hearing scheduled on: 10/05/2023 02:30 PM Has been: Held - Under advisement Hon. Mark Gildea, Presiding	Gildea
10/05/2023	161.1	Affidavit of Post Conviction Counsel	
12/21/2023	162	Notice of docket entry received from Appeals Court RE#34: Appellate proceedings stayed to 01/22/24. Status report due then concerning trial court's disposition of pending motion for new trial following hearing on 10/5/23. *Notice/attest/Gildea, J.	





**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

12/28/2023		Endorsement on Defendant's motion for a new trial, (#99.0): Other action taken It is ordered that the parties submit supplemental briefs specific to the issues raised herein. See memorandum of decision  Judge: Gildea, Hon. Mark	Gildea
12/28/2023	163	RESTRICTED INFORMATION - ORDER: Memorandum of Decision and order on Defendant's motion for a new trial	Gildea
01/22/2024	164	Notice of docket entry received from Appeals Court RE#35: Appellate proceedings STAYED to 02/23/2024. Status report due then concerning the disposition of the new trial motion including whether supplemental briefing has concluded. *Notice.	
02/05/2024	165	Status Report and Proposed Briefing Schedule	
02/06/2024		Endorsement on Defendant's Status Report and Proposed Briefing Schedule, (#165.0): This briefing schedule is approved. Defendant to file its brief by end of business 2/29/24 and Commonwealth to file its reply brief by end of business 3/29/24.  Judge: Gildea, Hon. Mark	Gildea
02/27/2024	165.1	Notice of docket entry received from Appeals Court Please take note that, with respect to the Status Report filed for Allah Jerome Mallory by Attorney Matthew Spurlock. (Paper #36), on February 27, 2024, the following entry was made on the docket: RE#36: Appellate proceedings STAYED to 04/23/2024. Status report due then concerning the disposition of the new trial motion including whether supplemental briefing has concluded.	
02/29/2024	166	Defendant's Renewed and Amended motion for a new trial	
02/29/2024	167	Defendant 's Motion to file supplemental memorandum pursuant to protective order	
02/29/2024	168	Supplemental Memorandum in support of New Trial Motion	
03/28/2024	169	Commonwealth 's Motion to extend time for filing response to this court's order for supplemental briefing	
03/29/2024		Endorsement on Motion to extend time for filing response to this court's order for supplemental briefing, (#169.0): ALLOWED	Gildea
04/12/2024	170	Commonwealth 's Motion to file its April 12, 2024 filings pursuant to the protective order of this Court issued on May 28, 2023	
04/12/2024	171	Commonwealth's briefing on the issues of staleness and ineffective assistance of counsel and opposition to the defendant's newly presented claims for relief	
04/12/2024	172	Commonwealth 's Motion to reopen evidence on the defendant's motion for new trial	
04/12/2024	173	Commonwealth 's Motion to conduct a limited search of trial exhibit 5: A Samsung Phone	



**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

04/23/2024	173.1	<p>Notice of docket entry received from Appeals Court with respect to the Status Report filed for Allah Jerome Mallory by Attorney Matthew Spurlock. (Paper #37), on April 23, 2024, the following entry was made on the docket:</p> <p>RE#37: Appellate proceedings STAYED to 6/24/2024. Status report due then concerning the disposition of the Commonwealth's motion to reopen the evidence related to the Rule 30 motion, and disposition of the new trial motion.</p>	
04/25/2024	174	RESTRICTED INFORMATION - Defendant 's Motion to file under protective order(copy sent to Judge Gildea)	
04/25/2024	175	RESTRICTED INFORMATION - Defendant 's Response (copy sent to Judge Gildea)	
04/25/2024	176	RESTRICTED INFORMATION - Opposition to Commonwealth's Untimely Motion to Reopen Evidence filed by Defendant(copy sent to Judge Gildea)	
06/28/2024	177	<p>Notice of docket entry received from Appeals Court</p> <p>RE#38: Appellate proceedings STAYED to 07/24/2024. Status report due then concerning the disposition of the Commonwealth's motion to reopen the evidence related to the Rule 30 motion, and disposition of the new trial motion</p>	
07/24/2024	178	<p>Notice of docket entry received from Appeals Court</p> <p>RE#39: Appellate proceedings STAYED to 08/26/2024. Status report due then concerning the disposition of the Commonwealth's motion to reopen the evidence related to the Rule 30 motion, and disposition of the Rule 30 motion. *Notice.</p>	
09/04/2024		<p>Attorney appearance</p> <p>On this date Julianne Campbell, Esq. added for Prosecutor Plymouth County District Attorney</p>	
09/04/2024	179	<p>RESTRICTED INFORMATION - MEMORANDUM &amp; ORDER:</p> <p>Memorandum of Decision and Order on Defendant's Motion for New Trial; For the foregoing reasons, it is ORDERED that the defendant's Motion for New Trial be DENIED.</p> <p>9/4/24 cc: JH, JC, MDS</p> <p>Judge: Gildea, Hon. Mark</p>	Gildea
09/04/2024		<p>RESTRICTED INFORMATION - Endorsement on Renewed and Amended Motion for a New Trial, (#166.0): DENIED</p> <p>See Memorandum of Decision and Order dated Sept. 4, 2024.</p>	Gildea
09/04/2024	180	<p>Notice of docket entry received from Appeals Court</p> <p>RE#40: Appellate proceedings STAYED to 10/03/2024. Status report due then concerning the disposition of the motion for new trial. *Notice.</p>	
10/01/2024	181	<p>Notice of appeal filed. (Re: Denial of Motion for New Trial)</p> <p>Applies To: Mallory, Allah Jerome (Defendant)</p>	





**COMMONWEALTH OF MASSACHUSETTS  
PLYMOUTH COUNTY  
Docket Report**

10/01/2024	184	ORDER: to produce transcripts of the hearings dated March 23, 2023 and May 26, 2023  Judge: Gildea, Hon. Mark	Gildea
10/03/2024	182	Notice sent to parties re: Notice of Appeal filed cc: MS, JH, JC	
10/03/2024	183	Notice of docket entry received from Appeals Court RE#41: Appellate proceedings are STAYED to 11/04/2024. Status report due then concerning the status of the assembly of the record on the appeal from the denial of the defendant's motion for new trial. *Notice.	
11/06/2024	185	Notice of docket entry received from Appeals Court Please take note that, with respect to the Status Report filed for Allah Jerome Mallory by Attorney Matthew Spurlock. (Paper #42), on November 6, 2024, the following entry was made on the docket:  RE#42: Appellate proceedings are STAYED to 12/4/2024. Status report due then concerning the status of the assembly of the record on the appeal from the denial of the defendant's motion for new trial. *Notice	
12/02/2024	186	Notice of docket entry received from Appeals Court Please take note that, with respect to the Status Report filed for Allah Jerome Mallory by Attorney Matthew Spurlock. (Paper #43), on December 2, 2024, the following entry was made on the docket: RE#43: Appellate proceedings are stayed to 1/31/25. Status report due then or within 7 days of entry of the appeal from the denial of the defendant's motion for new trial. Upon entry of the related appeal, the defendant is to file a motion to consolidate the appeals on both Appeals Court dockets. *Notice	
01/15/2025		CD of Transcript of 07/18/2023 10:00 AM Hearing on Motion for New Trial received from Susan M. Lobie, CET.	
01/15/2025		CD of Transcript of 10/05/2023 02:30 PM Motion Hearing received from Barbara A. Reardon, CET.	
01/15/2025		CD of Transcript of 05/03/2021 09:00 AM Conference to Review Status, 05/11/2021 09:00 AM Conference to Review Status, 06/11/2021 09:00 AM Conference to Review Status, 03/17/2022 02:00 PM Motion Hearing, 03/28/2023 09:00 AM Hearing on Motion for New Trial, 05/26/2023 10:00 AM Hearing on Motion for New Trial, 08/30/2023 03:30 PM Motion Hearing, 02/11/2022 02:00 PM Motion Hearing received from Maryann V. Schofield.	

12.28.23 923

## COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT  
CRIMINAL ACTION  
NO. 1683CR00215

COMMONWEALTH

vs.

ALLAH MALLORY

**MEMORANDUM OF DECISION AND ORDER ON  
DEFENDANT'S MOTION FOR NEW TRIAL**

The defendant, Allah Mallory, has been charged with multiple crimes involving narcotics and firearms arising out of a search warrant execution at a residence in Brockton. On August 26, 2019, a jury returned a verdict finding him guilty on all counts. The undersigned judge sentenced the defendant to sixteen to eighteen years at MCI Cedar Junction for the firearms offenses. The conviction on the remaining crimes were sentenced concurrently with the firearms offenses.

On February 5, 2021, the defendant filed a new trial, arguing he received ineffective assistance at trial from his attorney, Attorney Frank Spillane ("Attorney Spillane"). More specifically, he argued that Attorney Spillane failed to provide effective investigation into the defendant's cellphone records relative to the work schedules for the detectives who conducted the investigation into his alleged crimes. Moreover, he argued that Attorney Spillane should have filed a motion pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978) in order to challenge the veracity of the information in the affidavit supporting a search warrant for that residence. The court conducted hearings concerning the defendant's *Franks* arguments on July 18, 2023 and October 5, 2023.

cc: DA  
MS  
JG  
1-2-24

Upon review of the lengthy record on this case and the arguments advanced by the defendant and the Commonwealth, the court finds that, pursuant to *Franks*, materially false statements void the search warrant affidavit's averments regarding an [REDACTED], controlled buy. In light of this finding, the court orders the parties to submit further briefing in the manner set forth below.

### BACKGROUND

The charges against the defendant arise out of a search warrant executed on April 20, 2016, at a Brockton residence following three alleged controlled buys of narcotics. Detective Matthew Graham ("Detective Graham") drafted the affidavit for the search warrant. The affidavit described how Detective Graham, Detective Brian Donahue ("Detective Donahue"), and other officers not pertinent to this motion, investigated the defendant allegedly selling narcotics.

Two controlled buys, conducted on [REDACTED], and [REDACTED], are not disputed for purposes of this motion. The defendant argues that the affidavit's third controlled buy, dated [REDACTED],<sup>1</sup> could not have been conducted in the manner described.

Among other statements concerning [REDACTED] 2016, the affidavit states "[o]n or about April 14, 2016, Det. B. Donahue and Det. Graham met with CI#1 at a prearranged location." The affidavit then states that the informant contacted an individual known to it as "Parod" by

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<sup>1</sup> At various times during the litigation in this case, the defendant and the Commonwealth disputed whether this "on or about language" extended the possible dates for such controlled buy beyond only [REDACTED]. However, at the July 28, 2023 hearing, Detective Graham testified:

Commonwealth: And on this particular incident on [REDACTED], what did you do?

Detective Graham: I went and organized a confidential informant buy with Allah Mallory.

As such, Detective Graham's testimony resolved any dispute concerning the date upon which Detective Graham conducted the third controlled buy.

calling a specified phone, 508-933-5969, to arrange a purchase of heroin. The informant then went to the address listed in the search warrant affidavit, purchased heroin, and provided the heroin to Detective Graham.

The defendant argues that Detective Donahue was not working during the timeframe in which this alleged controlled buy occurred. As it relates to this case, Brockton Police Department officers receive pay for "overtime/court" when they appear for court proceedings. Officers also receive pay for "time due" when they work additional hours outside their scheduled shift, accruing hours as "comp" time. Finally, an officer's timesheet reflects the term "wrk" for time spent working during a regularly scheduled shift.

Per his timesheets, on [REDACTED], Detective Graham worked from [REDACTED] through [REDACTED] as overtime/court hours; [REDACTED] through [REDACTED] as time due; and then [REDACTED] through [REDACTED] for his regular shift. Per his timesheets, on [REDACTED], Detective Donahue worked [REDACTED] through [REDACTED] as overtime/court hours, [REDACTED] [REDACTED]. Thus, any overlapping time between the two detectives' shifts ended at [REDACTED].

The Brockton Police Department maintains records regarding the chain of custody for evidence such as narcotics. A record for [REDACTED], shows that Detective Graham submitted heroin to an evidence locker at [REDACTED]. The notation for the evidence states "CI BUY."

The defendant has produced records concerning his phone number 508-933-5969 on [REDACTED]. Per the records, there were [REDACTED] between [REDACTED] and [REDACTED]. These times reflect the hours that Detective Graham and Detective Donahue were both working. This number received [REDACTED] between [REDACTED] and [REDACTED]. These times reflect when Detective Donahue stopped working for the day and when Detective Graham submitted the

recovered substances to the department evidence locker. The [REDACTED] when Detective Donahue was no longer working.

### DISCUSSION

#### **A. Merits of the Defendant's *Franks* Argument**

Based upon its review of the records, the court agrees with the defendant's assessment concerning the timeframe of the phone calls, the officers' work schedules, and Detective Graham's submission of the evidence to the evidence locker. The Commonwealth's attempts to dispute this analysis are based solely upon speculation and generalities regarding Detective Graham's practices in preparing search warrant affidavits.<sup>2</sup>

In its efforts to undermine the sufficiency of the evidence established by the phone records, the Commonwealth states:

First, the defendant submitted the defendant's phone billing records and not call log detail records. These records submitted are records for only billable activity. The defendant's reliance on these records presume the incoming call(s) from the CI was billable activity.

Second, it is entirely possible the defendant had multiple means of receiving phone calls or used the internet or an application to receive incoming calls that are not reflected on the phone bill records. Even during this investigation, the defendant had a phone number for the first buy, provided the CI with a different number used in the second buy, and used the number in the first number for the third buy. See *Commonwealth v. Ormond O.*, 92 Mass. App. Ct 233, 235-238 (2017) (multiple cell phones often used in narcotics business).

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<sup>2</sup> In its opposition, the Commonwealth states:

As demonstrated by Detective Graham's search warrant affidavit and through testimony, Detective Donahue assisted with surveillance of the confidential informant buy of the defendant during the day. It is reasonable to infer that Detective Donahue as his common practice and routine, appeared in court pursuant to these summons, and rather than sit around in court and do nothing, for safety purposes and identity security purposes, he left and assisted Detective Graham in the confidential informant buy. Detective Donahue always choose to do actual work while he is getting paid instead of sitting at the courthouse doing nothing. It is reasonable to infer that is precisely what he did in this case according to his testimony, Detective Graham's affidavit, and Detective Graham's testimony.



Third, it is entirely possible that billing records are in Coordinated Universal Time (UTC) or in another time zone other than Eastern.

Fourth, it is entirely possible the CI used an application, used a blocked number, used a private number, or used the internet to contact the defendant via phone.

As to the first argument, the Commonwealth has not provided any basis to conclude that the phone records are not call log details. Its attempts to characterize the log as undated billable activity is not supported by the record. Similarly, the third argument references what is "entirely possible" relative to time zones. There is no support for this argument.

As to the second and fourth arguments, the court agrees that various electronic means exist for individuals to communicate amongst each other. Further, the court does not dispute that Massachusetts courts have held that it is not unusual for individuals selling narcotics to use multiple different phone numbers and that the defendant himself used two different phone numbers during the investigation. However, the pertinent inquiry specifically concerns the phone number the defendant allegedly used to receive phone calls on [REDACTED].

This court is not tasked with considering what electronic means the informant, or any other individual contacting the defendant, used to contact the defendant at this phone number. Instead, the phone records show a series of calls made to the phone number the search warrant affidavit has associated with the defendant on [REDACTED], and the defendant has established a timeline relative to the records. The court does not credit the Commonwealth's argument as to what is "entirely possible" regarding electronic means for receiving a phone call or that the various means may skew when calls are placed to a certain phone number or somehow obscure the full scope of calls received by the defendant on [REDACTED].

Detective Graham's sworn statements, attesting to Detective Donahue's presence during the controlled buy, are directly at odds with the information established by the record. Such

error was, at a minimum, reckless. The detectives' schedules and communications amongst themselves left little doubt to when they were each working on [REDACTED]. This materially false statement therefore voids the affidavit's averments regarding the [REDACTED] 2016, controlled buy pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978).

#### **B. Staleness**

Excising the portion of the search warrant affidavit concerning the [REDACTED], controlled buy pursuant to *Franks* does not automatically entitle the defendant to a new trial. Instead, the court must determine whether "after a hearing is held, the charge of making a knowingly false statement or a statement in reckless disregard of the truth is established, and, with the affidavit's false material set aside, the affidavit is insufficient to establish probable cause, the fruits of the search must be excluded." *Commonwealth v. Honneus*, 390 Mass. 136, 142 (1983).

Although not squarely addressed, this consideration initially turns on staleness because there is a question regarding whether the affidavit supplied sufficient probable cause without including the [REDACTED], controlled buy. By excising the controlled buy at issue, the warrant affidavit establishes that the last controlled buy was conducted on [REDACTED]. The officers executed the search warrant on April 20, 2016. The critical question becomes whether this lapse in time precludes a finding of probable cause by rendering the supporting evidence stale.<sup>3</sup>

"Because of the highly fact-intensive nature of the inquiry, it is not possible to formulate a bright-line test for staleness." *Commonwealth v. Guastucci*, 486 Mass. 22, 27 (2020). "[I]t is

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<sup>3</sup> Staleness was previously raised in a motion to suppress ruled upon by this court (Moriarty, J.). Judge Moriarty concluded that the warrant was not stale. However, the [REDACTED], controlled buy was included in the court's analysis in assessing staleness. Thus, the ruling was based on only several days passing between the alleged controlled buy and the execution of the warrant. This is distinguishable from the current posture of the case with this third controlled buy excised from the warrant. Judge Moriarty's decision on staleness therefore does not control this court's analysis of the issue.

well settled that narcotics are readily consumed or distributed so that probable cause to search for them rapidly dwindles. . . . [W]here conduct is shown to be continuing, however, the passage of time becomes less important and staleness may be overcome.” *Commonwealth v. Rice*, 47 Mass. App. Ct. 586, 590 (1999). “When information indicates such protracted or continuous activity, the older information remains relevant, even though that information viewed in isolation may have been too old to provide a substantial basis to conclude that the items in question were still likely to be found on the premises to be searched.” *Commonwealth v. Matias*, 440 Mass. 787, 792-793 (2004).

The defendant briefly references staleness, relying primarily upon a statement from Detective Graham during the July 18, 2023, hearing. Detective Graham previously obtained a warrant on April 1, 2016, but did not execute it. He testified stated that he coordinated the [REDACTED], controlled buy because the prior warrant “had gotten stale, so I had to freshen it up.”

However, the defendant has not set forth any legal or factual basis for why reliance upon the lay witness’s opinion as to staleness carries the day. He does not provide a comprehensive argument regarding staleness specific to the facts of this case.

Similarly, the Commonwealth briefly addressed staleness during the October 5, 2023, hearing, stating that Detective Graham was providing his personal opinion regarding staleness and it should not be bound by Detective Graham’s statement. The prosecutor merely stated, “I think it needs to be litigated if it goes that far” and “the Commonwealth does not waive that argument.” The Commonwealth therefore did not provide a comprehensive argument regarding staleness specific to the facts of this case.

The defendant and the Commonwealth are therefore ordered to provide supplemental briefing regarding staleness as it relates to the probable cause analysis for the search warrant



affidavit in light of this court's ruling that excludes information surrounding the [REDACTED] 2016, controlled buy.

### C. Ineffective Assistance of Counsel

Against the backdrop of staleness and the evidence demonstrated through the timesheets and phone records, the court must also determine whether Attorney Splaine's failure to pursue a *Franks* hearing necessarily constitutes ineffective assistance of counsel. Proof of ineffective representation requires the defendant to make two showings, both of which are indispensable: (1) counsel's performance fell "measurably below that which might be expected from the ordinary fallible lawyer" and, (2) that such conduct "likely deprived the defendant of an otherwise available, substantial ground of defense." *Commonwealth v. Saferian*, 366 Mass. 89, 96 (1974). "[I]n a case where ineffective assistance of counsel is charged, there ought to be some showing that better work might have accomplished something material for the defense." *Commonwealth v. Satterfield*, 373 Mass. 109, 115 (1977). "If an omission of counsel does not present a substantial risk of a miscarriage of justice ..., there is no basis for an ineffective assistance of counsel claim under either the Federal or the State Constitutions." *Commonwealth v. Curtis*, 417 Mass. 619, 625 (1994).

The defendant included an affidavit from Attorney Spillane in his filings. In his affidavit, Attorney Spillane states:

4. The defendant asserted that the alleged buys never occurred and asked me to bring a motion to suppress under *Franks v. Delaware*, 438 U.S. 154 (1978).
5. In the course of my research I obtained the defendant's cellular telephone records for the period during which the alleged controlled buys occurred.
6. After consideration and investigation, I saw no basis for a motion under *Franks*, and therefore did not bring one.
7. I did not consider whether the records of cellular telephone calls cast doubt on the veracity of the affidavit supporting the search warrant.

8. I did not seek to obtain the timesheets of the officers named in the affidavit as participants in the controlled buys.

The defendant argues that Attorney was ineffective for obtaining the defendant's phone records but then failing to seek a *Franks* motion to address the phone and timesheet records relative to the averments in the search warrant affidavit. As with the staleness argument, neither the defendant nor the Commonwealth have presented sufficient factual or legal analysis specific to this issue and Attorney Spillane's statements concerning his case strategy. Again, the focus is primarily on the *Franks* consideration and the parties do not sufficiently address the implications of a *Franks* determination in the context of ineffective assistance of counsel. More specifically, neither the defendant nor the Commonwealth have provided a comprehensive argument concerning whether Attorney Spillane's failure to pursue a *Franks* hearing was inconsistent with the strategy and representation by an ordinarily fallible lawyer.

The defendant and the Commonwealth are therefore ordered to provide supplemental briefing regarding ineffective of counsel specific to Attorney Spillane's decision not to file a *Franks* motion.

#### **D. Destruction of Evidence**

The defendant argues Detective Graham improperly allowed the destruction of the substances he recovered from the confidential informant on the date of any controlled buy. However, he has failed to set forth any legal or factual basis for such argument. There is presently no dispute regarding the testing of such substances.

Therefore, the defendant's arguments concerning destruction of evidence do not entitle him to a new trial.

#### **E. Compliance with Brockton Police Department Policies**

The defendant argues that Detective Graham did not comply with Brockton Police Department policies and procedures regarding confidential informants. However, the defendant has failed to set forth any legal or factual basis for this court to conclude that any lack of compliance by Detective Graham somehow raises a *Franks* issue or other basis for a new trial. Consideration of *Franks* and a request for new trial at this junction turns on analysis of the defendant's phone records relative to the detectives' reported work schedule. The manner in which Detective Graham, or any other officer within the Brockton Police Department, communicated and worked with a confidential informant has no bearing on the issues at hand.

Therefore, the defendant's arguments concerning Detective Graham's interactions with a confidential informant do not entitle him to a new trial.

**ORDER**

For the foregoing reasons, it is **ORDERED** that the parties submit supplemental briefs specific to the issues raised herein.

December 19, 2023



Mark C. Gildea  
Justice of the Superior Court

THIS DECISION IS TO BE SEALED AND IS SUBJECT TO THE PROVISIONS OF PROTECTIVE ORDER

SEAL

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT  
CRIM. NO. 1683CR00215

COMMONWEALTH

vs.

ALLAH MALLORY

MEMORANDUM OF DECISION AND ORDER ON  
DEFENDANT'S MOTION FOR NEW TRIAL

The defendant, Allah Mallory, has been charged with multiple crimes involving narcotics and firearms arising out of a search warrant execution at a residence in Brockton. On August 26, 2019, a jury returned a verdict finding him guilty on all counts. Following this conviction, the defendant and the Commonwealth have engaged in extensive motions practice, most recently involving analysis of cellphone records in the context of suppressing evidence under *Franks v. Delaware*, 438 U.S. 154 (1978). This court issued a ruling on December 19, 2023, holding, in part, that a portion of a search warrant at issue should be excised pursuant to *Franks*. In the ruling, the court also directed the Commonwealth and the defendant to submit further briefing regarding the defendant's previously filed motion for new trial. The matter is now back before this court for consideration of the supplemental briefing on the defendant's motion for new trial. For the foregoing reasons, the defendant's motion is **DENIED**.

**BACKGROUND**

The following facts are drawn from the parties' submissions and exhibits, with certain facts reserved for discussion below.<sup>1</sup>

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<sup>1</sup> The court incorporates by reference its December 19, 2023, ruling on the defendant's motion for new trial.

On April 1, 2016, Detective Matthew Graham applied for and obtained a warrant to search a residence located at 933 Warrant Avenue in Brockton. The defendant, referred to as "Parod," was the target of the search. Detective Graham submitted an affidavit in support of the search warrant application, which described his investigation into alleged narcotics activity involving the defendant.

In March and April of 2016, Detective Graham communicated with a confidential informant who admitted to purchasing narcotics from the defendant. The informant stated that the defendant had been distributing crack cocaine and heroin from a residence in Brockton. The informant also agreed to conduct three controlled buys of narcotics from the defendant. Acting upon such information, Detective Graham applied for and obtained a warrant to search the residence in Brockton. The warrant was issued on April 15, 2016, the day after the third controlled buy, and executed on April 20, 2016. The search revealed, among other items, a firearm, multiple documents related to narcotics distribution, and cash.

The defendant initially filed a motion for new trial in 2021. As the matter evolved, however, the defendant's argument focused upon purported false statements in the search warrant affidavit. He raised a *Franks* argument that Detective Graham purposefully included false statements in the search warrant affidavit, namely the circumstances of the third controlled buy, and that such statements should be excised from the affidavit. More specifically, he argued that Detective Graham falsely represented that Detective Brian Donahue participated in the third controlled buy, when Detective Donahue's timesheets directly disproved this assertion. On this basis, the defendant argues that, absent such false statements, the search warrant was unsupported by probable cause, and therefore the fruits of the search should be suppressed.

The court conducted evidentiary hearings on July 18, 2023, and October 5, 2023. Detective Graham and Detective Brian Donahue of the Brockton Police Department testified. Multiple documents were introduced as exhibit, largely involving cellphone records and timesheets for various individuals employed by the Brockton Police Department.

On December 19, 2023, this court issued a ruling on the defendant's motion for new trial. At that juncture of the case, the salient issue was whether statements in the search warrant affidavit should be excised pursuant to *Franks*. More specifically, the court's consideration was whether the third controlled buy referenced in the search warrant affidavit was unsupported by the factual record, potentially rendering fruits of a search warrant execution improperly obtained. Upon review of the record, namely cellphone documents and detectives' timesheets, the court concluded that the circumstances of the third controlled buy was inconsistent with the timesheets and therefore should not have been included in the search warrant affidavit. Accordingly, this court held that the evidence surrounding the third controlled buy should be excised from the search warrant affidavit.

The court ordered that the Commonwealth and the defendant submit further briefing regarding whether the search warrant was rendered stale by omitting the third controlled buy. Further, the court ordered further briefing to address whether the defendant's trial counsel was ineffective for failing to file a *Franks* motion. The Commonwealth and the defendant have submitted the requested briefing, and the court will now rule on the merits of the defendant's motion for new trial.

### DISCUSSION

The defendant argues he is entitled to a new trial because 1) the search warrant at issue was stale, 2) he received ineffective assistance of counsel, 3) art. 14 requires suppression of



evidence, 4) newly discovered evidence requires a new trial, 5) and the Commonwealth violated his rights under *Brady v. Maryland*, 373 U.S. 83 (1963). The court will address each of these arguments in turn.

#### A. Impact of *Franks* Ruling Upon a Probable Cause Determination

The defendant argues that, where the third controlled buy is excluded pursuant to *Franks*, the search warrant was stale and not supported by probable cause. Further, he argues that his attorney was ineffective for not pursuing a *Franks* motion prior to trial. The court will address each element of this two-part inquiry.

##### 1. Staleness

The defendant argues the search warrant affidavit was not supported by probable cause. “[P]robable cause to believe evidence of criminal activity will be found in a particular place must be demonstrated by a ‘nexus’ between the crime alleged and the place to be searched.” *Commonwealth v. Matias*, 440 Mass. 787, 794 (2004). “Information establishing that a person is guilty of a crime does not necessarily constitute probable cause to search the person’s residence.” *Commonwealth v. Cinelli*, 389 Mass. 197, 213 (1983). The nexus determination does not require direct observations of illegal evidence at a location, but instead “may be found in the type of crime, the nature of the missing items, the extent of the suspect’s opportunity for concealment, and normal inferences as to where a criminal would be likely to hide stolen property” (citations and quotation marks omitted). *Id.*

In arguing the search warrant was not supported by adequate probable cause, the defendant argues the warrant was stale at the time it was executed. Staleness is highly fact-intensive and there is no “bright line” test for staleness. *Commonwealth v. Guastucci* 486 Mass. 22, 27 (2020). “[I]t is well settled that narcotics are readily consumed or distributed so that

probable cause to search for them rapidly dwindles. . . . [W]here conduct is shown to be continuing, however, the passage of time becomes less important and staleness may be overcome.” *Commonwealth v. Rice*, 47 Mass. App. Ct. 586, 590 (1999). Further, “[w]hen information indicates such protracted or continuous activity, the older information remains relevant, even though that information viewed in isolation may have been too old to provide a substantial basis to conclude that the items in question were still likely to be found on the premises to be searched.” *Commonwealth v. Matias*, 440 Mass. at 792-793 (2004).

Here, twenty days lapsed between when Detective Graham obtained the search warrant and when the search was executed. The Supreme Judicial Court has noted that delay of only three days “raises further concerns.” *Commonwealth v. Pina*, 453 Mass. 431, 442 (2009). Thus, given that there was a fairly considerable lapse between Detective Graham obtaining and then executing the search warrant, the staleness analysis turns on whether the defendant’s practices were so protracted or continuous as to remain relevant and establish probable cause.

In *Commonwealth v. Connolly*, 454 Mass. 808 (2009), the SJC addressed staleness relative to controlled buys with confidential informants. The ruling states in pertinent part:

[c]ontrary to the defendant’s argument, the information contained in the affidavit was not stale. The defendant treats the affidavit as if the allegedly stale sales were the only evidence in the affidavit. But the affidavit established a continuous sequence of drug transactions by the defendant over a year-long period, ending at a time that was probative at the time of the search. See *Commonwealth v. Vynorius*, supra at 25, quoting *Bastida v. Henderson*, 487 F.2d 860, 864 (5th Cir. 1973) (“if an affidavit recites activity indicating protracted or continuous conduct, time is of less significance”). Indeed, the last two controlled purchases were made by Margeson at the end of August, 2004, less than two weeks before the warrant was sought. These two purchases alone were sufficient to establish probable cause to issue the warrant. See *Commonwealth v. Cruz*, supra at 843 (where six controlled purchases were made over four-week period, passage of two weeks between last purchase and issuance of warrant did not cause information to become stale). In addition, police surveillance also suggested ongoing drug activity after the last controlled purchase.



*Commonwealth v. Connolly*, 454 Mass. 808, 817 (2009).

As such, the SJC held that a series of drug transactions over a one-year period, with one such transaction conducted within two weeks of obtaining a warrant, was not stale. *Id.* This type of continuous conduct is not present here.

Per the search warrant affidavit, the informant stated that it purchased narcotics from the defendant then participated in three controlled buys over a one-month period. Moreover, there is no specific evidence regarding any pattern of purchases prior to the first controlled buy, and no indication that the defendant and the informant intended to continue making such transactions in the future. Lastly, there is no evidence regarding additional police surveillance at the residence that would buttress a belief that the defendant would have drugs at the residence at the time officers executed the search warrant. Thus, the search warrant was stale when it was executed on April 20, 2016.

## 2. Ineffective Assistance of Counsel

A finding that the search warrant was stale does not automatically entitle the defendant to a new trial. Instead, the defendant must show that trial counsel provided ineffective assistance of counsel as to this issue. The defendant argues that trial counsel's representation fell below that of an ordinary fallible lawyer in failing to "investigate known or readily available information for a *Franks* challenge." Proof of ineffective representation requires the defendant to make two showings, both of which are indispensable: (1) counsel's performance fell "measurably below that which might be expected from the ordinary fallible lawyer" and (2) that such conduct "likely deprived the defendant of an otherwise available, substantial ground of defense."

*Commonwealth v. Saferian*, 366 Mass. 89, 96 (1974).

The defendant has set forth a lengthy description of information presumably available to trial counsel. He argues that, had trial counsel completed an examination into employee timesheets cross-referenced with pertinent cellphone records, he could have advanced a *Franks* argument as discussed herein and prevailed in suppressing the search. However, the court's inquiry is not simply what trial counsel could have accomplished if he took the actions the defendant deems necessary. Instead, the court must consider whether trial counsel's actions fell "measurably below" representation by an "ordinary fallible lawyer." The defendant bears "a heavy burden to establish ineffective assistance of counsel" as to both elements. *Commonwealth v. Lao*, 450 Mass. 215, 221 (2007).

The defendant cannot meet his heavy burden to substantiate this element of a *Saferian* argument. Trial counsel obtained pertinent cellphone records, which reflected extensive usage during each of the dates in question, including multiple incoming calls. The defendant has failed to show that an ordinarily fallible lawyer would take further steps concerning the defendant's cellphone activity.<sup>2</sup> Absent this element of a *Saferian* argument, the defendant has not shown that trial counsel was ineffective in failing to take additional investigation concerning the defendant's cellphone records vis-à-vis the officers' timesheets.

In support of his ineffective assistance of counsel, the defendant largely focuses upon standards for assessing tactical and strategic decisions of an attorney. The defendant argues trial counsel's strategic choices rendered his assistance ineffective. "When the arguably reasoned tactical or strategic judgments of a lawyer are called into question, [the court] does not second guess competent lawyers working hard for defendants who turn on them when the jury happen to find their clients guilty" (quotation and citation omitted). *Commonwealth v. Rondeau*, 378 Mass.

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<sup>2</sup> The court also notes that trial counsel filed multiple pre-trial motions to suppress, lending credence to an assessment that he was actively advocating for the defendant during the proceedings.

408, 413 (1979). Rather, trial tactics that appear questionable in hindsight will not constitute ineffective assistance of counsel unless they were manifestly unreasonable when undertaken. *Commonwealth v. Haley*, 413 Mass. 770, 777-778 (1992). As it relates to trial counsel's strategic judgments, the defendant has not demonstrated that trial counsel made a strategic decision not to file a *Franks* motion. Instead, he argues throughout much of his brief that trial counsel was ineffective in simply not pursuing a *Franks* motion, which would reflect a purported error rather than a tactical decision. In this regard, the defendant's arguments concerning manifestly unreasonable trial tactics are without merit.

The defendant is therefore not entitled to a new trial on this basis.

#### **B. Application of Article 14**

The defendant argues that he is entitled to a new trial pursuant to Article 14 of the Massachusetts Declaration of Rights. In support of this argument, he states, that the "affidavit deliberately misrepresented Detective Donahue's presence at an alleged controlled buy during a time when he was not working" and that "[e]vidence seized pursuant to an affidavit containing intentional misstatement is inadmissible under art. 14." As such, his arguments hinge on whether Detective Graham made intentionally false statements.<sup>3</sup>

The defendant argues that the preponderance of the evidence standard applies to this analysis. Per this standard, a party meets its burden by demonstrating that a position is "more likely true than not." *Commonwealth v. Oppenheim*, 86 Mass. App. Ct. 359, 369 (2014). The defendant has not elicited any testimony or evidence to support a position that it is "more likely true than not true" that Detective Graham's averments in the search warrant affidavit were

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<sup>3</sup> The defendant's memorandum refers to comparing the Fourth Amendment and art. 14, noting that recklessness is sufficient to make a Fourth Amendment violation showing, but art. 14 requires intentional conduct. Where, by his own admission, reckless conduct is insufficient to establish an art. 14 violation, the court need not address the recklessness analysis raised in the defendant's memorandum.

intentionally false. There is no information before this court concerning whether Detective Graham made a knowingly false statement in his description of the third controlled buy, or whether it was an inadvertent error. On the state of the evidence, the court is left merely to speculate as to why Detective Donahue was listed as participating in a controlled buy when his employee records indicate he was not working at the time. Absent any evidence of intentional conduct as alleged by the defendant, he has failed to provide an adequate basis to show that his article 14 rights were violated.

The defendant is therefore not entitled to a new trial on this basis.

### C. Newly Discovered Evidence Analysis

The defendant argues that, if the court rejects his ineffective assistance of counsel argument as it relates to the discovery of the worklog records, he is entitled to a new trial based upon newly discovery evidence.

A defendant seeking a new trial on the ground of newly discovered evidence must establish both that the evidence is newly discovered and that it casts real doubt on the justice of the conviction. The proffered evidence must be material and credible. Moreover, the motion judge must find there is a substantial risk that the jury would have reached a different conclusion had the evidence been admitted at trial or that the new evidence would probably have been a real factor in the jury's deliberations (internal citations and quotation omitted).

*Commonwealth v. Brown*, 71 Mass. App. Ct. 743, 748 (2008).

"Evidence is newly discovered if it was unknown to the defendant or trial counsel and not reasonably discoverable at the time of trial" (quotations omitted). *Commonwealth v. Moore*, 489 Mass. 735, 749 (2022). In asserting this defense, the defendant argues

In the circumstances of this case, deficient performance and newly discovered evidence are two sides of the same coin. A conclusion that that trial counsel was not ineffective in failing to investigate the basis for a *Franks* motion implies that grounds for a pretrial *Franks* motion were "not reasonably discoverable through reasonable pretrial diligence," and therefore, "newly discovered."

The defendant improperly views these doctrines as “two sides of the same coin.” As discussed above, the defendant’s ineffective assistance of counsel claim fails because he has not set forth an adequate factual or legal basis for this court to conclude that trial counsel’s representation fell below the standard of an ordinarily fallible lawyer. As such, the ineffective assistance of counsel does not turn on what constitutes reasonable pretrial diligence. Instead, there are different standards for what constitutes ineffective assistance of counsel (consideration of an ordinarily fallible lawyer as to investigating evidence) and what constitutes newly discovered evidence (consideration of whether evidence “was reasonably discoverable through reasonable pretrial diligence”).

Thus, such claims are not necessarily contradictory and a finding rejecting ineffective assistance of counsel does not automatically implicate a determination that evidence at issue is therefore newly discovered. An attorney could reasonably have discovered evidence prior to trial, failed to do so, and yet still meet the standard of an ordinarily fallible lawyer.

The defendant has set forth a lengthy list of the evidence he perceives as newly discovered and the procedural means by which newly discovered evidence may come into play. He also reiterates the standard about what constitutes newly discovered evidence. However, his arguments miss a critical consideration, as he fails to fully articulate how the specific evidence in this case may or may not have been “reasonably discoverable through reasonable pretrial diligence” but not discovered before trial and used in his defense.

With reference to newly discovered evidence considerations, the defendant argues he is entitled to a new trial under Mass. R. Crim. P. 30 because “justice may not have been done.” He further argues that such purported injustice “is especially salient where the evidence substantiating the *Franks* motion was concealed by the affiant detective before, during, and after



the trial.” However, as discussed above, there is insufficient evidence that Detective Graham intentionally concealed evidence.

Additionally, in support of his argument concerning generalized justice considerations, the defendant points to *Commonwealth v. Epps*, 474 Mass. 743 (2016). His reliance upon this case is misplaced, however, as the applicable facts here are clearly distinguishable from the instant case. *Epps* involved a situation whereby the defendant was convicted of assault and battery on a child, predicated largely upon allegations surrounding shaken baby syndrome. Following his conviction, several studies were published that would have bearing on the prosecution’s theory of the case, and the court “consider[ed] whether there was newly discovered evidence in the form of new scientific or medical findings.” *Id.* at 763. Here, the purportedly newly discovered evidence involves more tangible items and information, rather than newly developed scientific or medical findings.

The defendant is therefore not entitled to a new trial on this basis.

#### **D. Brady Analysis**

The defendant argues that the Commonwealth failed to disclose exculpatory evidence, and his *Brady* rights were consequently violated. Under *Brady* “prosecutors’ disclosure obligations extend to exculpatory information held by members of the prosecution team. Officers involved in the prosecution of a case are members of the prosecution team, such that prosecutors are duty-bound to disclose exculpatory facts in their possession.” *Graham v. District Att’y for Hampden Dist.*, 493 Mass. 348, 364 (2024). Thus, the defendant would be entitled to exculpatory evidence in Detective Graham’s possession.

In this regard, the defendant argues that

Detective Graham knew that the affidavit submitted in support of the warrant contained a material falsehood about the occurrence of the [REDACTED] controlled buy . . . And because

this exculpatory evidence was known to Detective Graham acting on the government's behalf in the case. . . that knowledge is imputed to the Commonwealth as a matter of law.

He further argues that Detective Graham was a key prosecution witness, and that evidence of false statements regarding the circumstances of the third controlled buy would be "powerful impeachment- and therefore *Brady*- evidence." As with several of his other arguments, however, his *Brady* argument is predicated upon a purported fact that Detective Graham was necessarily aware of the timesheet inconsistency when he prepared the affidavit and intentionally obscured information regarding Detective Donahue's participation in the third controlled buy.

Based on the evidentiary record, neither Detective Graham nor the Commonwealth had any basis to believe that there was exculpatory evidence surrounding Detective Donahue's work schedule and willfully withheld it. The defendant argues that "Detective Graham- as a member of the prosecution team- was actively concealing the exculpatory information from the defense." This averment is not supported by the record before this court. The evidence did not come to light until the defendant's post-trial investigation comparing the detectives' work schedules against the timing and circumstances of the third controlled buy. Absent information that Detective Graham or the Commonwealth previously had knowledge of this purported exculpatory evidence and purposefully withheld it, there is no evidence of a *Brady* violation.

The defendant is therefore not entitled to a new trial on this basis.

### ORDER

For the foregoing reasons, it is ORDERED that the Defendant's Motion for New Trial be DENIED.

*Mark C. Gildea*

September 4, 2024

Mark C. Gildea  
Justice of the Superior Court

9/4/24  
CC: JH, JC,  
MDS

## CERTIFICATE OF COMPLIANCE

I hereby certify that this application for direct appellate review complies with Mass. R.A.P. 11 and 20(a). The application is set in 14-point Athelas font and its argument section contains 1,902 words.

/s/ Matthew Spurlock  
Matthew Spurlock

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July 1, 2025



## CERTIFICATE OF SERVICE

Pursuant to Mass. R.A.P. 13(e), I hereby certify that I have made service of this application for direct appellate review upon the attorney of record for the Commonwealth by Electronic Filing System on:

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