

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

HAMPDEN, SS.

DAR-
2026-P-1196

COMMONWEALTH

v.

ARDELL TERRIEK INNIS
DEFENDANT/ APPELLANT

APPLICATION FOR DIRECT APPELLATE REVIEW

Now comes the defendant, Ardeell Innis, and moves pursuant to Mass. R. App. P. 11, that direct appellate review be granted in this appeal from the Hampden Superior Court's denial of his 2024 Motion for New Trial, Docket No. 0679CR0881 (Mulqueen, J), entered in the Appeals Court, Docket No. 2026-P-1196, on August 19, 2026.

The first issue is whether, in a case resting on an uncorroborated eyewitness-identification—where the postconviction record also demonstrates newly available eyewitness-identification science and substantial investigative failures by trial counsel—the Commonwealth may withhold exculpatory forensic evidence, affirmatively tell the jury no testing occurred, and yet avoid a new trial. Review is warranted because Mr. Innis's petition arises from an extraordinary breakdown in

the integrity of the adjudicative process and presents a Brady violation of unusual gravity: the Commonwealth possessed the only forensic evidence recovered from the crime scene, the results of which excluded Ardell, and it withheld that evidence for more than twenty years after telling the jury it had never been tested. See Brady v. Maryland, 373 U.S. 83, 87 (1963). The motion judge nevertheless concluded the evidence was not exculpatory because the complainant later changed her statements. The combination of withheld exculpatory forensic evidence and an affirmative representation to the jury that no testing occurred is one this Court has not previously addressed.

The second issue is whether the motion judge erred by rejecting each claim in isolation without considering that the newly available eyewitness-identification science, the suppressed exculpatory forensic evidence, and trial counsel's failure to investigate witnesses he himself summoned all bore directly on the reliability of the Commonwealth's principal evidence: the lone eyewitness identification. Although the judge acknowledged that the non-identification evidence was "not overwhelming," she nonetheless concluded that the newly available eyewitness-identification science would not have been a real factor and

failed to consider the substantial affidavits showing that counsel did not investigate or present critical alibi and identity-related witnesses. See Commonwealth v. Gaines, 494 Mass. 525 (2024); Commonwealth v. Garcia, 66 Mass. App. Ct. 167, 172–173 (2006).

These errors foreclosed the cumulative-prejudice inquiry contemplated by Brescia and its progeny. See Commonwealth v. Brescia, 471 Mass. 381, 396 (2015). As Commonwealth v. Epps established, Rule 30(b) requires assessing “whether justice may not have been done” when multiple deficiencies and evolving scientific evidence converge, even where no prior case presents the same combination of defects. 474 Mass. 743, 768 n.28 (2016). The circumstances here—suppressed forensic evidence excluding Ardell, newly available science undermining the lone eyewitness, and uninvestigated witnesses bearing on identity—directly implicate the reliability of the Commonwealth’s core evidence and should not be assessed *only* in isolation, particularly where their combined effect bears on identification reliability.

Ardell submits that this appeal presents important questions of first impression concerning withheld exculpatory forensic evidence; the

application of this Court's Rule 30(b) framework to newly available eyewitness-identification science; and whether, where multiple errors independently undermine the Commonwealth's principal evidence, their cumulative effect must be considered in determining whether justice may not have been done; as well as substantial constitutional questions preserved below and matters of public importance warranting this Court's review. As further support for his Application, Ardell relies on the attached Memorandum of Law.

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MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR DIRECT APPELLATE REVIEW

I. STATEMENT OF PRIOR PROCEEDINGS

In 2007, a Hampden County Superior Court jury convicted Ardeell Innis¹ of home invasion and assault and battery, and acquitted him of armed robbery while masked. TR5_14–15. He was sentenced to two-and-a-half years in the house of correction and seven years' probation. SI_6. His appeal, filed August 22, 2007, and entered October 13, 2009, was affirmed November 16, 2010; further appellate review was denied February 8, 2011. ARA_024–25; Commonwealth v. Innis, 78

¹ This case involves multiple individuals with the Innis surname. For purposes of clarity, those individuals will be referred to by their first names.

Mass. App. Ct. 1109 (2010). After his August 21, 2009, release, a February 24, 2011, probation violation led to a twenty-year state-prison sentence. ARA_011.

The Committee for Public Counsel Services assigned screening counsel to evaluate both the underlying conviction and the probation case. ARA_385–386. Screening counsel litigated a motion for new trial in the probation matter and began investigating this case, but died in 2019. Id. Undersigned counsel was appointed in 2021. Id.

On February 20, 2024, Ardell filed a motion for discovery and his first motion for new trial, involving newly available eyewitness-identification science and ineffective assistance of counsel. ARA_012. The Commonwealth opposed on August 23, 2024. ARA_013. In October 2024, undersigned counsel filed a public records request with the Springfield Police Department, which produced never disclosed documents showing that, contrary to trial testimony, the police developed two latent fingerprints from an item the victim said the perpetrator touched, compared them to Ardell's prints, and *excluded* him. ARA_014–016. Ardell filed a supplemental motion for discovery; the court heard arguments on November 21, 2024, and allowed the

requests in part on December 26, 2024. ARA_014. The Commonwealth reported that the envelope had been lost or destroyed and no documentation existed beyond the one-page report discovered in the records request. ARA_255.

On April 2, 2025, Ardell filed a supplemental motion on this Brady issue and a reply to the Commonwealth's Opposition. Brady v. Maryland, 373 U.S. 83, 87 (1963); ARA_015,183. On September 11, 2025, the court orally allowed an evidentiary hearing on the newly available science but not on the Brady or ineffective assistance claims. SD_4. The court said it would consider affidavits, filed by Ardell, from eight civilian witnesses and prior appellate counsel, none of whom had previously testified. SD_6.

On November 19, 2025, the court heard testimony from Dr. Nancy Franklin, admitted thirty-two exhibits, and heard arguments on all issues. ARA_014. On July 31, 2026, the court denied the motion, finding (1) the expert testimony would not have been a real factor for the jury, (2) no Brady violation, and (3) no ineffective assistance. ARA_241. Ardell filed a timely notice of appeal. ARA_261.

II. STATEMENT OF FACTS RELEVANT TO APPEAL

A. The Incident

On the afternoon of April 23, 2006, Althea Clement was home collecting and counting money for the savings club² she managed when she heard her doorbell ring. TR2_89,94–95. As she opened the door, a young, clean-shaven man who she had never seen before said, “Sonya sent me,” pulled down a mask over his face, and brandished a gun. TR2_96–99. He and another masked, armed man Clement had not initially seen forced their way inside and demanded money. Id. Although Clement initially stated there was no money in the home, her fear quickly led her to reveal the savings club cash, which the men took before fleeing. TR2_99–108.

B. The Investigation

Clement was still shaking and crying as she called 911, and when officers arrived. TR2_108–109. According to the police report, she relayed the details of the robbery, the savings club, and the one robber’s reference to “Sonya.” ARA_344. Police also learned Clement knew a

² A savings club is a type of peer-to-peer savings practice, in which members contribute cash weekly and a single member receives the lump sum of the contributions. TR2_88–89.

woman named Sonya Innis, another member of the savings club. Id. Although Clement did not have Sonya's address, she provided the general neighborhood and Sonya's phone number. Id.

Officers then took Clement to the police station where she looked through over 2500 photos of individuals consistent with her general description of the perpetrator, but she could not make an identification. TR3_29–31. After Clement failed to make an identification from the database, Det. Trent Duda searched for Sonya Innis's home address. TR3_31–32. He determined that Sonya had a stepson named Ardell who "fit" Clement's description as far as "age and race." Id.

The subsequent investigation focused exclusively on Ardell. Duda found a photo of Ardell and built an array around it. Id. Later that same day, Det. Gregory McCain returned to Clement's home and administered the eight-photo sequential array. TR3_46–49. Clement went through the photos four or five times before ultimately selecting Ardell's image, noting in her written statement that it "kept jumping out at me." Id.; ARA_335; ARA2_12. When McCain asked, "how sure are you?" Clement reported she was seventy percent certain. TR3_49; ARA2_12,32.

A few days later, Duda and McCain visited the Innis home and spoke with Ardell and Sonya, but made no written record of their conversations or observations, despite Duda having a notebook. TR3_38–39,65. They left without making an arrest. ARA_344; TR3_65. Ten days later, Clement returned to the police station to view the same array; again she cycled through the photos multiple times before landing on Ardell’s image, this time claiming certainty. TR3_34–35,49–50. Officers then told her she had identified Sonya’s stepson, Ardell, and only thereafter obtained a written statement from Clement. ARA_345,355; TR3_74.

The savings club was well known in the broader community, including among non-members, and Clement did not know all members. TR2_149–151. Many people would have known substantial cash was delivered to and kept in her home on Sundays. Id. No physical evidence or other witnesses tied Ardell to the crime. Police did not canvass the neighborhood, speak to neighbors, take door fingerprints, contact savings club members, or investigate whether another “Sonya” existed or whether any members or their relatives matched the perpetrators’

descriptions. TR3_26. They never sought a warrant to search the Innis home. TR3_68.

C. Clement's Changing Statements and Multiple Identification Procedures

Clement's accounts shifted in multiple material ways. She initially told first responders there were seventy savings club members contributing one hundred dollars weekly, later testified there were thirty-five with varying contributions, and ultimately conceded she did not know the exact number and membership changed over time. ARA_344; TR2_145–151.

She was inconsistent about who delivered and collected Sonya's payments, stating before the grand jury that Sonya relied on her husband and a "young man [Clement] knew very well," but at trial on cross naming only Sonya's husband, daughter, and "another friend from church"; she made brief reference to a "young man" but did not claim to know him well and did not say he delivered Sonya's payments.

ARA2_19,21; TR2_91,149. She maintained that proxies were common and Sundays brought frequent foot traffic. TR2_149–150; TR3_103.

Clement's descriptions of the two suspects also varied. Although she consistently said the first man was clean-shaven, her estimates of

the suspects' height, build, complexion, clothing, masks, and weapons varied widely across her 911 call, later written statement, grand-jury testimony, and trial testimony. ARA_334–335; ARA2_25–26,31; TR2_151–153; TR3_17–8. Her mask descriptions changed, both before and during trial: after testifying one suspect wore a “ski mask, grayish, dark,” she testified the next day that “one was a dark mask, and one was gray” but could not recall which suspect wore which. TR2_97; TR3_18.

Clement also gave conflicting accounts of the identification procedures. Police reports, detectives' trial testimony, and Clement's written statement all reflect that she spent over an hour reviewing roughly 2,500 database photos and made no identification. ARA_335,344; TR3_29–31,56. Yet at trial, Clement claimed she viewed only 200 photos over twenty minutes and recognized Ardell. ARA_335; TR2_116. At the second procedure, she reported seventy percent certainty to McCain, but at trial she claimed to have been seventy to eighty percent certain, newly asserted that the database image of Ardell differed from the array image, and stated all photos in the array were “individuals of this guy,” implying the array contained only photos of

Ardell. TR2_120; TR3_13–16. She also testified the array was black-and-white, yet the original signed photograph is undeniably in color. ARA_326; TR2_119.

D. The Envelope

Immediately after the crime, Clement told officers she led the intruders into her bedroom and handed them a manilla envelope containing the savings club cash, which they emptied before fleeing. ARA_340. McCain seized and tagged the envelope as evidence. TR3_60. Before the grand jury, Clement said the money was laid in rows on the bed. ARA2_29. At trial, Clement testified she “threw the money on the bed” to count it when the doorbell rang. TR2_95.

Defense counsel unequivocally believed the envelope was not tested. At trial, he sought to establish that McCain seized but did not process it for fingerprints. TR3_58–60. The prosecutor objected, questioned counsel’s good-faith basis, and claimed not to recall any recovered envelope. TR3_58–60. Counsel relied on the initial report documenting the seizure, and the judge allowed questioning and argument that the failure to test reflected an inadequate investigation.

ARA_344; TR3_57–63,88. McCain testified the envelope was never tested for fingerprints. TR3_57,61.

Nearly twenty years later, a public records request revealed this testimony was patently false. In 2024, undersigned counsel obtained records from the Springfield Police Department, including a previously undisclosed third page of the incident report showing that on May 3, 2006, Det. Reigner processed the envelope, lifted two prints, compared them to Ardell's, and eliminated him as the source. ARA_426. The prints were also run through the statewide Applicant Fingerprint Identification Service with negative results. Id. The Commonwealth confirmed it was unaware of this testing, conceded it was never disclosed, and reported the envelope had been lost or destroyed with no additional documentation of the testing. ARA_255–256.

E. Newly-Available Memory and Eyewitness-Identification Science

Post-conviction counsel consulted Dr. Nancy Franklin, an expert in memory and eyewitness identification. ARA_267. After reviewing the record, Franklin issued a report identifying fifteen scientific factors that placed Clement's identification at substantial risk of error. ARA_281–325.

At the evidentiary hearing and in her report, Franklin explained that identifying unfamiliar, stranger faces is inherently difficult, with low correct-identification rates and heightened risk of false identifications due to incomplete encoding, rapid memory loss, and vulnerability to post-event information. HRG_20–21,37,39. She emphasized that “reliability” in this context refers to the degree of misidentification risk. Franklin noted that numerous scientifically established factors undermined the reliability of Clement’s identification: highly stressful and brief exposure, masks and weapons, inconsistencies between the initial description and Ardell’s appearance, an initial non-identification, low-confidence selection, and repeated suspect exposure through non-blind suggestive procedures. ARA_303–307; HRG_55–56,61–62,64–65,67–70.

Specifically, Franklin explained that although the record provides no precise timing of Clement’s initial interaction with the unmasked assailant,³ the brevity of the exposure—combined with a partially obscured hairline—diagnostically increased the risk of

³ According to Clement, she opened her door to a young man she had never seen before and exchanged *at most* fifteen words before he pulled down his mask and entered. TR2_96.

misidentification. ARA_338,336. Referencing a perceptual matching laboratory experiment, Franklin testified that unfamiliar face identification carries a high error rate even absent memory demands. HRG_28. Franklin further noted the short viewing duration would have limited Clement's opportunity to encode facial information, and her description that the mask was worn as a "cap" suggested the suspect's hairline, a feature commonly relied upon when identifying strangers, was obscured. ARA_290; HRG_34–35. She added that masks and partial disguises obstruct critical facial features, and that, although Clement reported looking into the intruder's eyes, eyes alone provide "very little to go on," because they are "very hard to distinguish person to person." HRG_35.

Franklin testified that Clement's fleeting unmasked view was further compromised by acute stress, which sharply impairs the encoding and retention of facial details and can produce error rates approaching chance. ARA_290–291; HRG_29–30. She explained that the firearms that terrified Clement compounded the already elevated misidentification risk: weapon-related stress would have severely limited Clement's ability to form a stable memory, and the

well-documented weapon-focus effect redirects attention from faces to guns. ARA_292–293; HRG_31–33,61–62. The involvement of multiple perpetrators further divided Clement’s attention, weakening facial encoding. HRG_33–34,61–62.

Crucially, Franklin further explained that stressors can disrupt memory consolidation and significantly degrade identification accuracy, even when the initial view *precedes* those stressors, and that multiple stressors have a cumulative deleterious effect on memory. HRG_31. Franklin also highlighted inconsistencies between Clement’s initial description of the perpetrator and Ardell, noting that Clement first described the intruder as dark-skinned, clean-shaven, five-foot-eight, medium build, with a round face. HRG_62. Records showed Ardell to be medium-brown skinned and unshaven, with a chinstrap beard. ARA_349–50. Franklin testified that these discrepancies were compelling indicators that the initial description did not match Ardell. HRG_44, 62.

Franklin explained the event itself substantially limited Clement’s ability to encode an accurate memory, and that these limitations were later amplified by police-driven procedures and

interactions known to affect identification accuracy. She testified that Clement's failure to identify anyone after viewing thousands of images from the database was a diagnostic non-identification, meaning if Clement viewed Ardell's photo, he was not the perpetrator. ARA_305; HRG_64. Although Franklin acknowledged there was no record of the database images Clement viewed, detectives testified that "it should have been there." TR3_42; HRG_64. Franklin further noted that the later eight-photo array involved several conditions associated with elevated error rates, including repeated exposures to the same images, non-blind administration, and suggestive prompting. HRG_47–49. She explained that repeated exposures can lead witnesses to select the face that has become most familiar, even when that familiarity arises from prior procedures rather than the event itself. HRG_21–22,47–48. Franklin also testified that long decision times, multiple passes through an array, and low initial confidence are empirically linked to accuracy no better than chance. HRG_45–46.

Franklin also identified several sources of memory contamination across these procedures. She noted that immediately after Clement selected Ardell in the second array, McCain told her she had identified

Sonya's stepson—confirmatory feedback known to inflate later confidence and alter a witness's memory of view quality and duration. ARA_307. Franklin explained that confidence inflation following such feedback is well documented, with witnesses often becoming more certain even as accuracy declines. HRG_19,52–53. She further testified that non-blind administration, suggestive instructions emphasizing particular facial features, poor filler selection (including mismatched skin tone), and repeated suspect exposure all increase innocent-suspect identifications. HRG_38–39,54,46–47. Best-practice protocols require fair fillers, blind administration, neutral instructions, prompt confidence statements, and only one procedure per suspect. HRG_39,76–77.

Finally, Franklin also identified a significant risk of unconscious transference, a well-documented phenomenon in which a witness misattributes familiarity to a perpetrator due to prior innocent exposures. ARA_299. She testified that such misattribution could arise here from two sources: repeated exposures to Ardell's image across multiple procedures, and, if credited, prior encounters when he delivered Sonya's savings club payments. ARA_306; HRG_74–75.

Franklin noted that Clement's initial statement that the photo she selected merely "looked familiar," coupled with established age-related reliance on familiarity cues, heightened this risk. HRG_75–76,108.

F. The Abandoned Affirmative Defense

Trial counsel filed a notice of alibi and summoned seven witnesses, and the parties agreed before empanelment to release the record-keepers with admissibility stipulations. ARA_418; TR1_6; TR2_3. But before Clement even finished testifying, counsel withdrew the alibi defense. TR3_4. In response, the Commonwealth clarified that without an affirmative defense in play, its stipulation would be limited to the authenticity, leaving counsel without a path to introduce the records. TR3_3–5. Although the court granted counsel a brief recess to recall the record keepers, within minutes, counsel announced he would not call either record keeper. TR3_8.

Prior post-conviction counsel began locating the summoned witnesses but passed away before completing his investigation. ARA_385. Present counsel continued that work, securing affidavits from those witnesses and conducting additional investigation. ARA_381,385.

Collectively, the witnesses and records that counsel summoned but then abandoned establish that Ardell worked a morning shift at Old Navy, returned home where Cameron Bond was doing construction, and was still home around 1:00 p.m., when his father began calling him. ARA_351,362,433–434. Bond had to alert Ardell to answer the phone, and Ardell did not leave until approximately 2:30 p.m. ARA_247,351,362.

Sonya's shift ended at 2:30 p.m. and Ardell recalls being approximately eight to ten minutes late; he then drove her to Clement's home to drop off her payment, stopped briefly at a nearby store, and returned home around 3:00 p.m. ARA_356–57. Other affidavits place Ardell at or near home continuously thereafter, aside from a short trip after 3:30 p.m. to pick up his stepsister. ARA_351,362,369. Because the robbery occurred between 3:00 and 3:06 p.m., and Clement called 911 at 3:08 p.m., the reconstructed timeline makes Ardell's participation impossible. ARA_336,338,384.

Just as critically, the affiants collectively establish that Ardell was no stranger to Clement. Multiple witnesses—including savings club member Carnell Forbes—attested that Ardell regularly delivered

Sonya's payments to Clement and was seen at her home on numerous Sundays. ARA_353–354,355,361,365–370,374. Forbes, unrelated to the Innis family, corroborated details of Clement's payment routine consistent with Ardell's account. ARA_354,374. This evidence aligns with Clement's grand-jury testimony that a "young man . . . that I know very well" regularly delivered Sonya's payments.⁴ ARA2_020-21.

Finally, the affidavits show trial counsel never contacted any of the summoned witnesses except Ardell's parents. Bond reports he was available and even present at the courthouse but was never interviewed. ARA_352. Forbes, himself a victim of the savings club theft, explains that he unexpectedly received a summons to Ardell's trial in the summer of 2007, despite never having spoken to the attorney who issued it, and that he was present for the trial but no one spoke to him. ARA_354.

⁴ When asked by a grand juror, McCain agreed that Clement had seen Ardell before: Grand juror: "To your knowledge does the lady that got robbed has she ever seen Sonya's stepson before . . . this time?" McCain: "Yes." ARA2_013.

G. The Appeal

Ardell's appellate attorney stated in an affidavit that he only had one brief phone call with Ardell—before receiving the trial transcripts—and never spoke to him about his case or his innocence claims.

ARA_393. Counsel also confirmed that he did not speak with any witnesses and did not investigate trial counsel's failure to interview or present them. ARA_392–393. Instead, he raised two issues on appeal: errors in the burden-of-proof instruction and the discharge of a deliberating juror. ARA_22,393.

H. The Motion Judge's Decision

The motion judge denied Ardell's Rule 30 motion, rejecting his claims of newly discovered eyewitness memory science, withheld exculpatory evidence, and ineffective assistance. ARA_241. She made no express factual findings on the nondisclosure or ineffective assistance claims, instead limiting her findings to Franklin's testimony, where she found:

- Franklin qualified as an expert.
- Eyewitness-identifications carry a measurable risk of inaccuracy.

- Memory is incomplete, subject to immediate forgetting, and prone to filling gaps.
- People often cannot distinguish between real and constructed details. ARA_246–247.

The judge also acknowledged the factors Franklin identified as affecting accuracy, including:

- Difficulty identifying unfamiliar faces;
- Brief exposures;
- Effects of stress, weapons, multiple perpetrators, and masks;
- Repeated prior exposure;
- Vulnerability to post-event suggestion;
- Risks from multiple procedures, feedback, and non-blind administration. ARA_247–249.

Recognizing that Rule 30(b) encompasses later-developed scientific research, the judge deemed Franklin’s testimony newly discovered and applied the “real factor” standard, but concluded it would not have impacted the jury’s deliberations because the remaining evidence, while “not overwhelming,” corroborated the identification. ARA_251–252.

In her rulings of law, the judge concluded:

- Franklin’s conclusion that Clement’s viewing opportunity lasted only seconds was “not completely supported” by the record.

- Franklin failed to consider reliability enhancing facts: close range, unobstructed facial view, direct eye contact, no weapon display and focus on single person during initial view, good lighting, and same race.
- Franklin cited factors undermining reliability (stress, weapons, etc.) arose only after Clement’s view of the intruder’s face.
- Trial counsel vigorously impeached the identification, emphasizing stress, Clement’s need for glasses, presence of guns, inconsistencies, and arguing confidence does not equal accuracy.
- Trial judge delivered the 1979 Rodriguez instruction addressing factors relevant to identification reliability. ARA_252,254.

Considering Franklin’s testimony alongside the full record, the judge concluded that the identification was not so weak as to require expert assistance and ultimately found that the newly discovered science would not have been a real factor in the jury’s deliberations.

ARA_254.

As to the Brady claim, the judge acknowledged the Commonwealth’s nondisclosure and custody of the fingerprint report but deemed the comparison non-exculpatory—and thus non-prejudicial—because Clement did not testify at the grand jury or trial that perpetrators touched the envelope, rendering alternative-source fingerprints speculative. ARA_256–257. Regarding ineffective assistance, the judge inferred “simple, strategic” reasons for

withdrawing the alibi and found that choice not manifestly unreasonable. ARA_259. She assigned “little weight” to the eight civilian affidavits, noting most affiants were family members. Id. She did not address counsel’s failure to interview or investigate the summoned witnesses before deciding not to call them mid-trial. ARA_259. Having rejected Ardell’s underlying claims, she likewise concluded appellate counsel was not ineffective for failing to raise these issues. ARA_260.

III. STATEMENT OF ISSUES OF LAW

1. When the complainant initially reported that the perpetrators touched an envelope, later changed her account to deny that they did, and the Commonwealth possessed but withheld fingerprint analysis *excluding* the defendant from that envelope while affirmatively telling the jury that no testing occurred, did the motion judge abuse her discretion in concluding that the suppressed evidence and affirmative misrepresentation were not exculpatory?
2. When a Rule 30(b) motion presents suppressed forensic evidence, newly available eyewitness-identification science, and previously uninvestigated witnesses that all bear directly on the reliability of the Commonwealth's principal evidence, may a motion judge reject each claim separately without addressing material facts in the trial record that connect them, or must the judge address their combined effect in determining whether justice may not have been done?

All issues raised in this application were presented in the motion below.

IV. ARGUMENT

The injustice of Ardell’s conviction is that neither the jury nor any prior appellate court that reviewed his case ever heard critical exculpatory evidence bearing directly on identity. The jury never learned that Clement initially told officers the perpetrators touched an envelope containing cash, nor that police later lifted two prints, compared them to Ardell’s, and *excluded* him as the source; rather, they were told the envelope had “never been tested.” Nor did they hear expert testimony on scientifically recognized factors that undermined the identification’s accuracy. And they never heard from the seven witnesses who would have established that Ardell was elsewhere during the robbery and not a “stranger” to Clement.

These errors—newly available science casting doubt on the justice of the conviction, Gaines, 494 Mass. at 533–36, the Commonwealth’s failure to disclose exculpatory evidence, Commonwealth v. Tucceri, 412 Mass. 401, 412–14 (1992), deficient performance by prior counsel, Commonwealth v. Saferian, 366 Mass. 89, 96 (1974), or the “confluence” of these factors, Epps, 474 Mass. at 767; Commonwealth v. Rosario, 477 Mass. 69, 77–78 (2017)—independently and cumulatively demonstrate

justice was not done. The motion judge therefore abused her discretion in denying the motion.

A. Where the Complainant's Account Shifted and the Commonwealth Withheld Fingerprint Exclusions While Affirmatively Telling the Jury No Testing Occurred, the Motion Judge Erred in Finding the Exclusion Not Exculpatory

The Fourteenth Amendment and Article Twelve of the Massachusetts Declaration of Rights require the Commonwealth to disclose exculpatory evidence material to guilt or punishment.

Commonwealth v. Pope, 489 Mass. 790, 806–807 (2022). Massachusetts law likewise requires disclosure of any fact tending to exculpate or diminish culpability. Id. at 807; Mass. R. Crim. P. 14(a)(1)(A)(iii). This duty includes the obligation to inquire into potential exculpatory information and to learn of and disclose evidence held by agents of the Commonwealth. Commonwealth v. Ware, 471 Mass. 85, 95 (2015); Graham v. District Attorney for the Hampden Dist., 493 Mass. 348, 367 (2024). Failure to meet these obligations may warrant a new trial. Commonwealth v. Caldwell, 487 Mass. 370, 375 (2021). To obtain relief, a defendant must show the evidence was within the Commonwealth's control, provided "some significant aid," and that the nondisclosure

caused prejudice. Tucceri, 412 Mass. at 404–405; Commonwealth v. Watkins, 473 Mass. 222, 231 (2015).

Although the Commonwealth conceded—and the judge agreed—that the fingerprint report was within its custody and never disclosed, satisfying possession and nondisclosure, the judge nonetheless abused her discretion in determining the exclusion was not exculpatory. See ARA_256. Notably, the judge’s analysis omitted key facts, including why the envelope was seized and that the jury was falsely told it was never tested. Focusing solely on Clement’s later claim that the money was on the bed, the judge reasoned that no perpetrator fingerprints would be expected. Id. Yet Clement initially told first responders she handed the perpetrators the envelope and they emptied it before fleeing, and the jury heard McCain seized it. ARA_340; TR3_58. McCain then incorrectly testified the envelope was never processed, and trial counsel, relying on that testimony, limited his questioning to the inadequacy of the investigation. TR3_57–63. In a case hinging entirely on her shifting recollections, forensic proof undermining Clement’s earliest account could have been pivotal. Franklin explained that earlier descriptions are most reliable and later revisions risk

contamination undermining the reliability of the identification.

ARA_294; HRG_44. The judge's speculation that other members might have touched the envelope lacks record support and does not vitiate the exclusion's exculpatory value. See ARA_256–257. The police report itself established the basis for seizing the envelope, and although the prints could have been Clement's, no comparison was performed—an additional failure in the Commonwealth's investigation. ARA_344.

“Exculpatory [evidence] is not a narrow term connoting alibi or other complete proof of innocence . . . but rather comprehends all evidence which tends to negate the guilt of the accused.”

Commonwealth v. Healy, 438 Mass. 672, 679 (2003); Commonwealth v. Ellison, 376 Mass. 1, 22 (1978). The withheld exclusion met that standard. It contradicted Clement's initial account, used by police to justify seizure and testing, and directly supported the misidentification defense by *excluding* Ardell as the source. Evidence undermining a key witness's reliability or strengthening the defense is exculpatory even if it does not conclusively prove innocence. See Commonwealth v. Daniels, 445 Mass. 392, 401 (2005).

The judge improperly relied on Laguer, which held that fingerprint exclusions from commonly handled objects were of little probative value because the prints could not be tied temporally to the crime, the exclusions were duplicative of others that were disclosed to the defense, and the jury learned that the defendant was excluded from fingerprints recovered from the scene. 448 Mass. 585, 592–593 (2007). By contrast, here, the latent-print analysis—on an envelope said to have been touched by perpetrators during the robbery—was wholly withheld from the defense and misrepresented to the jury as never having been performed, making the undisclosed results qualitatively different from the cumulative, temporally unmoored exclusion in Laguer. Accordingly, the complete nondisclosure, temporal tie to the crime, and false representation renders Laguer’s rationale inapplicable and necessitates a holistic appraisal of the exclusion’s probative value in light of all material evidence—including Clement’s shifting story, which was central to the defense and directly relevant to the probative value of the exclusions. See Commonwealth v. Marrero, 493 Mass. 338, 345 n.9 (2024) (distinguishing prints on commonly handled items from prints on objects tied to the crime). The motion judge conducted no such

holistic assessment. Clement’s initial account provided a concrete, nonspeculative basis for expecting probative fingerprint evidence; any doubt about its value arises only because the Commonwealth withheld the report, performed no comparison to Clement or others, and then lost or destroyed the envelope, foreclosing further testing.

Although this Court has held that the Commonwealth may not present testimony it “knows or should know is false,” Commonwealth v. Ware, 482 Mass. 717, 721 (2019), it has not addressed the combination present here: the *complete suppression* of favorable fingerprint results *paired with* an affirmative misrepresentation to the jury that no testing occurred. Out-of-jurisdiction authority is therefore instructive. In Denton v. State, a Florida appeals court held that an undisclosed crime-scene DNA report constituted exculpatory or impeaching Brady material and that the prosecution’s repeated representations to the defense that no testing had been performed supported a finding of willful suppression. 246 So. 3d 413, 416 (Fla. Dist. Ct. App. 2018). In Henning v. Commissioner of Correction, the Connecticut Supreme Court ordered a new trial because the state crime lab director falsely testified at trial that an item had tested positive for blood, the incorrect

testimony of the lab as an investigating agency was imputed to the prosecution, and the prosecution's failure to correct the false testimony was material under the stricter Brady standard governing evidence the prosecution knew or should have known was inaccurate. 334 Conn. 1, 26–28 (2019). And in Granillo v. State, the Hawai'i Supreme Court held that due process is violated by false testimony even when later scientific advances reveal its falsity, rejecting a reading of Napue and Giglio that only knowing use of false evidence triggers constitutional error. 158 Hawai'i 385, 407 (2026) (citing Napue v. Illinois, 360 U.S. 264, 267 (1959); Giglio v. United States, 405 U.S. 150, 154 (1972)).

Those same principles govern here. The defense cannot discover exculpatory forensic evidence held solely by the Commonwealth, especially when the prosecution represents that no testing exists. Excusing such nondisclosure leaves defendants with no meaningful way to access evidence locked within the Commonwealth's exclusive control, reducing constitutional protections to a mere facade.

B. Rule 30(b) Required the Motion Judge to Consider the Combined Effect of Interrelated Grounds Bearing on the Reliability of Clement’s Identification, the Commonwealth’s Most Significant Evidence

It is well-established that, in evaluating whether justice may not have done, a motion judge may need to “look beyond the specific, individual reasons for granting a new trial to consider how a number of factors act in concert to cause a substantial risk of a miscarriage of justice and therefore warrant the granting of a new trial.” Rosario, 477 Mass. at 77–78. See also Brescia, 471 Mass. at 391; Epps, 474 Mass. at 767–768; Ellis, 475 Mass. at 481; Gaines, 494 Mass. at 547; Commonwealth v. Pina, 498 Mass. 43, 58 (2026). Brescia and its progeny establish that there are *necessarily* circumstances in which a motion judge “may need to look beyond the specific, individual reasons for granting a new trial” and assess “how a number of factors act in concert to cause a substantial risk of a miscarriage of justice.” Rosario, 477 Mass. at 77–78 (emphasis added). In Epps, this Court went even further, finding the motion judge erred in “*failing* to evaluate . . . whether ‘justice may not have been done’ because of a confluence of counsel’s performance and evolving scientific research,” despite the lack of precedential guidance on the “unusual circumstances . . . that would

justify such an analysis.” Epps, 474 Mass. at 768 n. 28 (emphasis added).

This case calls for this Court’s guidance on how a motion judge should assess the combined effect of multiple independent errors that bear on the same central proposition—the reliability of the identification—where the remaining evidence cannot establish identity. The withheld fingerprint exclusion was objective evidence directly bearing on whether Ardell was the perpetrator, yet the jury was affirmatively told the envelope had not been tested, preventing the defense from using its exculpatory force. Newly available eyewitness-identification science independently undermines the reliability of Clement’s identification. And trial counsel’s failure even to speak with witnesses who could attest to Ardell’s whereabouts and Clement’s prior familiarity with him—corroborating Clement’s grand-jury testimony that a “nice young man” regularly delivered Sonya’s payments and McCain’s belief that Clement had seen Sonya’s stepson before—deprived the jury of evidence undermining the identification and contradicting the premise that Ardell was the

stranger who robbed her. ARA_355,361,365,366,368,370,374;
ARA2_013,19,20.

Epps, Rosario, and Gaines are instructive. In Epps, which held the motion court abused its discretion in failing to consider the cumulative impact of the claims, the confluence involved distinct legal grounds arising from counsel’s performance and newly available scientific research; the circumstances here arise from distinct evidentiary sources that independently bear on the same dispositive question of identity. 474 Mass. at 767–768. In Rosario, the defendant sought a new trial based on newly discovered fire science coupled with multiple evidentiary strands bearing on the reliability of his confession; although this Court agreed that the scientific evidence “by itself, did not cast real doubt” on the conviction, it held that the unique confluence of evidentiary sources collectively demonstrated that justice may not have been done. 477 Mass. at 76. And in Gaines, this Court concluded that newly discovered eyewitness-identification research, together with the Commonwealth’s nondisclosure of exculpatory evidence in a case lacking physical evidence, established that “justice may not have been done.” 494 Mass at 547.

The evidence here is even stronger, because Clement's identification was the linchpin of the Commonwealth's case. Without that evidence, what remains is plainly insufficient for conviction.⁵ This is precisely the kind of case in which looking at the impact of each claim in isolation frustrates the broader purpose of the Rule 30(b) inquiry. The withheld fingerprint exclusion, the newly available scientific expert testimony, and civilian witnesses offering both an alibi and evidence of Clement's prior familiarity with Ardell form a unified body of exculpatory material that the jury never heard, which may well have impacted their verdict. Viewed together, these circumstances exemplify the "confluence of factors" showing that justice may not have been done.

⁵ Even as it was, the jury struggled to reach a verdict in this case. TR2_42-5_15.

V. REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

This case sits at the crossroads of constitutional disclosure law and this Court’s developing Rule 30 framework, presenting two related issues of particular importance that should be resolved by this Court.

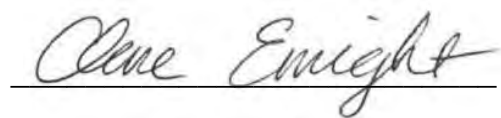
First, this Court has not yet squarely addressed the exculpatory nature and materiality of evidence withheld by the Commonwealth under circumstances such as these, where forensic testing excluding a defendant from the only physical evidence recovered from the scene—with conflicting accounts as to whether it was touched by the perpetrators—is coupled with an affirmative representation to the jury that the item had “never been tested.”

Second, the issue assumes particular significance because the conviction rests substantially on an uncorroborated eyewitness-identification. Over the last decade, this Court has begun mapping the legal landscape of eyewitness-identification in light of new scientific developments, holding that newly discovered eyewitness-identification expert testimony requires a new trial if the eyewitness testimony was central to the Commonwealth’s case, even if it was not the only evidence

connecting the defendant to the crime scene. Pina, 498 Mass. at 50, 54; Gaines, 494 Mass. at 540.

This case calls for the Court’s guidance on when a motion judge must “look beyond” individual defects and assess how multiple factors—here, newly available eyewitness-identification science, suppressed exculpatory forensic evidence, and counsel’s failure to investigate—operate together in determining whether justice may not have been done. The question requires not only the application of settled law but clarification of how recent Rule 30(b) precedent functions when several circumstances bearing directly on the reliability of an identification-dependent conviction intersect with a constitutional suppression claim—issues that are novel, constitutionally significant, and appropriate for this Court’s review.

Respectfully Submitted,
ARDELL INNIS
by his attorneys

A handwritten signature in cursive script, reading "Clare Enright", written in black ink over a horizontal line.

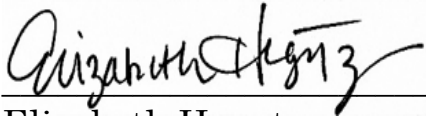
Clare Enright, BBO#713058

A handwritten signature in cursive script, reading "Elizabeth Hugetz", written in black ink over a horizontal line.

Elizabeth Hugetz, BBO#685554

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the rules of court that pertain to the filing of applications for direct appellate review including Rule 11 (b) and (c), Rule 20(a)(4), and Rule 27.1 of the Massachusetts Rules of Appellate Procedure. The font is the proportional Century Schoolbook, size 14. The argument section contains fewer than 2,000 words in the parts of the application required by Rule 11 as counted by the word count feature on Microsoft Office Word.



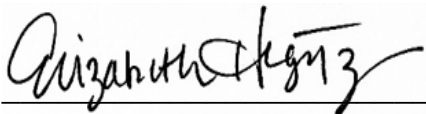
Elizabeth Hugetz

Date: October 8, 2026

CERTIFICATE OF SERVICE

I hereby certify under the pains and penalties of perjury that on this date, October 8, 2026, I served the defendant-appellant's Application for Direct Appellate Review through the Massachusetts Appeals Court's electronic filing system on the Commonwealth:

Michael Locke, Assistant District Attorney
Hampden County District Attorney's Office
50 State Street
Springfield, MA 01102



Elizabeth Hugetz

Date: October 8, 2026

ADDENDUM

0679CR00881 Commonwealth vs. Innis, Ardell Terriek

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 07/18/2006
- DCM Track:
- B - Complex
- Initiating Action:
- HOME INVASION c265 §18C
- Status Date:
- 07/18/2006
- Case Judge:
-
- Next Event:
-

[All Information](#) [Party](#) [Charge](#) [Event](#) [Tickler](#) [Docket](#) [Disposition](#)

Party Information

Commonwealth
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Alias

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[More Party Information](#)

Party Charge Information

- **Innis, Ardell Terriek**

- - Defendant

Charge # 1:

265/18C/A-0 - Felony HOME INVASION c265 §18C

- Original Charge
 - 265/18C/A-0 HOME INVASION c265 §18C (Felony)
- Indicted Charge
-
- Amended Charge
-

Charge Disposition

Disposition Date
Disposition
07/13/2007
Guilty Verdict

- **Innis, Ardell Terriek**

- - Defendant

Charge # 2:

265/17/B-0 - Felony ROBBERY, ARMED & MASKED c265 §17

- Original Charge
 - 265/17/B-0 ROBBERY, ARMED & MASKED c265 §17 (Felony)
- Indicted Charge
-
- Amended Charge
-

Charge Disposition

Disposition Date
Disposition
07/13/2007
Not Guilty Verdict

- **Innis, Ardell Terriek**

- - Defendant

Charge # 3:

265/13A/B-1 - Misdemeanor - more than 100 days incarceration A&B c265 §13A(a)

- Original Charge
 - 265/13A/B-1 A&B c265 §13A(a) (Misdemeanor - more than 100 days incarceration)
- Indicted Charge
-
- Amended Charge
-

Charge Disposition

Disposition Date
Disposition
07/13/2007
Guilty Verdict

Events				
Date	Session	Location	Type	Event Judge Result
08/07/2006	Criminal 1 -	Ct. Rm. 1	Arraignment	Held as Scheduled
08/25/2006	Criminal 1 -	Ct. Rm. 1	Hearing for Appearance / Appointment of Counsel	Held as Scheduled
11/30/2006	Criminal 1 -	Ct. Rm. 1	Pre-Trial Hearing	Held as Scheduled
03/13/2007	Criminal 1 -	Ct. Rm. 1	Hearing	Rescheduled
03/14/2007	Criminal 1 -	Ct. Rm. 1	Hearing	Held as Scheduled
04/03/2007	Criminal 1 -	Ct. Rm. 1	Final Pre-Trial Conference	Rescheduled
04/17/2007	Criminal 1 -	Ct. Rm. 1	Jury Trial	Rescheduled
05/14/2007	Criminal 1 -	Ct. Rm. 1	Final Pre-Trial Conference	Held as Scheduled
06/01/2007	Criminal 1 -	Ct. Rm. 1	Jury Trial	Not Held
07/05/2007	Criminal 1 -	Ct. Rm. 1	Jury Trial	Not Held
07/09/2007	CR Session 6	- Ct. Rm 2	Jury Trial	Held as Scheduled
07/10/2007	CR Session 6	- Ct. Rm 2	Jury Trial	Held as Scheduled
07/11/2007	CR Session 6	- Ct. Rm 2	Jury Trial	Held as Scheduled
07/12/2007	CR Session 6	- Ct. Rm 2	Jury Trial	Held as Scheduled
07/13/2007	CR Session 6	- Ct. Rm 2	Jury Trial	Held as Scheduled
09/13/2007	Criminal 1 -	Ct. Rm. 1	Hearing	Held as Scheduled
09/20/2007	Criminal 1 -	Ct. Rm. 1	Hearing for Sentence	Held as Scheduled
09/20/2007	Criminal 1 -	Ct. Rm. 1	Hearing	Rescheduled
11/10/2010	Criminal 1 -	Ct. Rm. 1	Hearing for Appearance / Appointment of Counsel	Not Held
02/24/2011	Criminal 1 -	Ct. Rm. 1	Hearing	Held as Scheduled
03/01/2011	CR Session 2	- Ct. Rm 3	Bail Review	Held as Scheduled
03/01/2011	CR Session 2	- Ct. Rm 3	Violation of Probation	Rescheduled
03/01/2011	CR Session 2	- Ct. Rm 3	Violation of Probation	Rescheduled
04/05/2011	CR Session 2	- Ct. Rm 3	Violation of Probation	Not Held

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
04/05/2011 09:00 AM	CR Session 4 - Ct. Rm 6		Violation of Probation Hearing		Held as Scheduled
04/29/2011 09:00 AM	CR Session 4 - Ct. Rm 6		Status Review		Rescheduled
05/05/2011 02:00 PM	CR Session 4 - Ct. Rm 6		Status Review		Held as Scheduled
05/27/2011 09:51 AM	Criminal 1 - Ct. Rm. 1		Violation of Probation Hearing		Held as Scheduled
06/16/2011 09:49 AM	CR Session 4 - Ct. Rm 6		Violation of Probation Hearing		Rescheduled
06/30/2011 02:00 PM	CR Session 4 - Ct. Rm 6		Violation of Probation Hearing		Held as Scheduled
10/22/2024 09:21 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Hearing RE: Discovery Motion(s)		Canceled
11/15/2024 09:21 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Hearing RE: Discovery Motion(s)	Mulqueen, Hon. Jane E	Not Held
11/21/2024 02:00 PM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Hearing RE: Discovery Motion(s)	Mulqueen, Hon. Jane E	Decision rendered
01/15/2025 02:15 PM	Criminal 1 - Ct. Rm. 1		Conference to Review Status		Held as Scheduled
02/21/2025 02:00 PM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Conference to Review Status	Mulqueen, Hon. Jane E	Held as Scheduled
05/27/2025 09:23 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Motion Hearing	Callan, Hon. Michael K	Not Held
05/27/2025 02:00 PM	CR Session 2 - Ct. Rm 3	SPRF-3rd FL, CR 3 (SC)	Motion Hearing	Mulqueen, Hon. Jane E	Rescheduled
06/23/2025 09:00 AM	CR Session 2 - Ct. Rm 3	SPRF-3rd FL, CR 3 (SC)	Motion Hearing	Mulqueen, Hon. Jane E	Decision rendered
08/13/2025 02:00 PM	CR Session 2 - Ct. Rm 3	SPRF-3rd FL, CR 3 (SC)	Conference to Review Status	Mulqueen, Hon. Jane E	Not Held
09/02/2025 02:00 PM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Motion Hearing	Duncan, Hon. Tracy	Rescheduled
09/11/2025 09:00 AM	Criminal 1 - Ct. Rm. 1	SPRF-3rd FL, CR 1 (SC)	Motion Hearing	Mulqueen, Hon. Jane E	Held via Video/Phone
11/19/2025 09:00 AM	Criminal 1 - Ct. Rm. 1		Hearing on Motion for New Trial	Mulqueen, Hon. Jane E	Held - Under advisement

Ticklers

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Pre-Trial Hearing	08/07/2006	08/07/2006	0	06/30/2011
Final Pre-Trial Conference	08/07/2006	05/28/2007	294	06/30/2011
Case Disposition	08/07/2006	06/11/2007	308	06/30/2011
Under Advisement	11/21/2024	12/21/2024	30	12/26/2024
Under Advisement	11/19/2025	12/19/2025	30	
Under Advisement	06/23/2025	07/23/2025	30	09/11/2025

Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/18/2006	Indictment returned	1	
07/24/2006	Summons for arraignment issued ret 8-7-06	2	
07/31/2006	Summons returned		
08/07/2006	Deft arraigned before Court		
08/07/2006	Appearance of Deft's Atty: Perman Glenn, III	3	
08/07/2006	Deft waives reading of indictment		
08/07/2006	RE Offense 1:Plea of not guilty		
08/07/2006	RE Offense 2:Plea of not guilty		
08/07/2006	RE Offense 3:Plea of not guilty		
08/07/2006	Deft released on personal recognizance*Conditions		
08/07/2006	Bail warning read (Page,J.)		
08/07/2006	Assigned to Track "B" see scheduling order		
08/25/2006	Appearance of Deft's Atty: Perman Glenn, III	4	
11/30/2006	Rule 17 MOTION by Deft: for reports in the possession of American Medical Response	5	
11/30/2006	Affidavit of counsel	5.1	
11/30/2006	MOTION (P#5) allowed (see pleading) (Daniel A. Ford, Justice)		
11/30/2006	ORDER: American Medical Response (Daniel A. Ford, Justice)	6	
11/30/2006	MOTION by Deft: for mug shot of the defendant	7	
11/30/2006	MOTION by Deft: to inspect exhibits presented to the grand jury and grand jury minutes	8	
11/30/2006	MOTION by Deft: for notes, tape recordings and 911 calls and CFS reports	9	
11/30/2006	MOTION by Deft: for original photographs of alleged crime scene	10	
11/30/2006	MOTION (P#7, 8 & 10) allowed (Daniel A. Ford, Justice)		
11/30/2006	MOTION (P#9) allowed (see pleading) (Daniel A. Ford, Justice)		
11/30/2006	Agreement on Discovery motions	11	
11/30/2006	Commonwealth files Certificate of compliance	12	
11/30/2006	Pre-trial conference report filed	13	
01/24/2007	MOTION by Deft: to suppress identification from and use of Photographic array	14	
01/24/2007	Deft files affidavit of Counsel in support of motion to suppress identification from and use of Photographic array	14.1	
01/24/2007	Deft files affidavit of defendant in support of motion to suppress identification from an use of photographic array (Ardell Innis)	14.2	
01/24/2007	Deft files Memorandum of law in support of motion to suppress identification from and use of Photographic array	15	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
01/24/2007	MOTION by Deft: for Assistant District Attorney to disclose evidence of political pressure to bring charges against the Defendant	16	
01/31/2007	Hospital records from American Medical Response received		
03/13/2007	Affidavit of Patrick S. Sabbs, A.D.A.	17	
03/14/2007	JOINT motion filed to continue	18	
03/14/2007	MOTION (P#18) F.P.T.H. continued to 5/14/07. Allowed-continued to 6/1/07 for the reasons stated in the motion (Constance M. Sweeney, Justice).		
03/21/2007	MOTION by Deft: Ardell Innis, Motion for work records of defendant from Old Navy, Eastfield Mall, Springfield, Massachusetts	19	
03/21/2007	Affidavit of counsel in support of defendant's rule 17 motion for records concerning time worked by Ardell Innis from Old Navy, Eastfield Mall, Springfield Massachusetts.	19.1	
03/21/2007	MOTION by Deft: to file notice of alibi late	20	
03/21/2007	Affidavit of counsel in support of defendant's motion to file notice of alibi late.	20.1	
05/10/2007	Deft files: Notice of Alibi	21	
05/10/2007	Deft files: List of witnesses	22	
05/14/2007	Filed: Joint Final Pre-Trial Memorandum	23	
06/01/2007	MOTION by Commonwealth: for a protective order	24	
06/01/2007	MOTION (P#24) allowed (Peter A. Velis, Justice).		
07/05/2007	Case held in Session- Ready for trial		
07/09/2007	Deft files request for Voir Dire of potential jurors	25	
07/11/2007	MOTION by Deft: for Required Finding of Not Guilty	26	
07/11/2007	MOTION (P # 26) denied (Cornelius J. Moriarty, II, Justice).		
07/11/2007	MOTION by Deft: Re-Newed Motion for required Finding of Not Guilty	27	
07/11/2007	MOTION (P#27) denied (Cornelius J. Moriarty, II, Justice).		
07/11/2007	Defendant's oral motion to dismiss count 2 as duplicitous Denied (Moriarty, Justice)		
07/12/2007	Defendant's oral motion of objection to photo submitted as an exhibit request redaction DENIED (Moriarty, Justice)		
07/12/2007	Defendant's Counsel Renewed oral motion to have count 2 dismissed Denied (Moriarty, Justice)		
07/13/2007	RE Offense 1:Guilty verdict	28	
07/13/2007	RE Offense 2:Not guilty verdict	29	
07/13/2007	RE Offense 3:Guilty verdict	30	
07/13/2007	Exhibits filed	31	
07/13/2007	Bail revoked and defendant ordered held without the right (Moriarty, Justice)		
07/13/2007	Bail: mittimus issued	32	
07/13/2007	List of jurors filed.	33	
07/13/2007	Defendant's oral motion for mistrial DENIED (Moriarty, Justice)		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/20/2007	MOTION by Deft: Renewed motion for Required Finding of Not Guilty or in the Alternative request for the jury verdict to be set aside	34	
07/20/2007	Deft files Memorandum of Law in support of Defendant's Renewed Motion for Required Finding of Not Guilty or in the Alternative Request for the Jury Verdict to be set aside	35	
08/02/2007	Defendant's request for motion hearing on pleading #34 allowed at set for 9/13/07 at 2PM (Moriarty, J.)		
08/06/2007	MOTION by Deft: for Leave of Court to File Appeal Late N. 8/22/07	36	
08/06/2007	NOTICE of APPEAL FILED by Ardell Innis N. 8/22/07	37	
09/13/2007	Hearing on (P#34 held, matter taken under advisement (C.J. Moriarty, Justice)		
09/13/2007	Bail: mittimus issued	37.1	
09/13/2007	Bail revoked defendant Held without the Right		
09/19/2007	MOTION (P#34) Denied (see memo and order) (Cornelius J. Moriarty, Justice)		
09/19/2007	Order on defendant's renewed motion for required finding of not guilty or in the alternative request for the Jury Verdict to be set aside pursuant to Massachusetts Criminal Procedure Rule 25(b)(2) (C.J. Moriarty, Justice)	38	
09/20/2007	Defendant sentenced on Count 3 to Hampden County House of Correction for 2 1/2 years; on Count 1 to 7 years Probation from and after sentence in Count 3. Conditions - see Clerk's log. Judge Moriarty retains personal jurisdiction. (Cornelius J. Moriarty, Justice)	39	
09/20/2007	Sentence credit given as per 279:33A: 68 days by agreement		
09/20/2007	Victim-witness fee assessed: \$90.00 (Cornelius J. Moriarty, Justice)		
09/20/2007	Probation supervision fee assessed: \$65.00 or 8 hours community service (Cornelius J. Moriarty, Justice)		
09/24/2007	Court Reporter Flaherty, Patricia A. is hereby notified to prepare one copy of the transcript of the evidence of 7/9/07, 0710/07 ,07/11/07 ,07/12/07 and 07/13/07.	40	
09/24/2007	Court Reporter Foulks, Amy (DIGITAL RECORDING DEVICE) is hereby notified to prepare one copy of the transcript of the evidence of 9/19/07 and 09/20/07 before Judge Moriarty.	41	
10/05/2007	MOTION by Deft: to Withdraw as Counsel N. 10/10/07	42	
10/05/2007	MOTION by Deft: for Appointment of Appellate Counsel N. 10/10/07	43	
10/05/2007	Transcript of testimony received volumes # 1--9-20-07 from court reporter, Amy Foulks		
10/09/2007	Victim-witness fee paid as assessed \$90.00	44	
10/11/2007	MOTION (P#43) allowed (Cornelius J. Moriarty, Justice)		
10/11/2007	Notice of assignment of counsel filed.	45	
10/25/2007	Notice of assignment of counsel filed.	46	
05/19/2009	Order for Transcript Cancelled because email recieved from Therese Wilson stating nothing found on September 19, 2007 recording (See Pleading)	47	
07/13/2009	Transcript of testimony received volumes # 1 7/9/07 from court reporter, Flaherty, Patricia A.		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/13/2009	Transcript of testimony received volumes # 1 7/10/07 from court reporter, Flaherty, Patricia A.		
07/13/2009	Transcript of testimony received volumes # 1 7/11/07 from court reporter, Flaherty, Patricia A.		
07/13/2009	Transcript of testimony received volumes # 1 7/12/07 from court reporter, Flaherty, Patricia A.		
07/13/2009	Transcript of testimony received volumes # 1 7/13/07 from court reporter, Flaherty, Patricia A.		
08/07/2009	Notice of assembly of record; mailed to Appeals Court per Rule 9(d)	48	
10/16/2009	Notice of Entry of appeal received from the Appeals Court	49	
10/20/2009	Acknowledgment of Notification of duty to provide DNA sample received	50	
11/02/2010	Probation files Notice of Surrender and hearing(s) for alleged violation(s) of probation to appear on 11/10/2010	51	
11/10/2010	Probation warrant to issue (Moriarty, J.)		
11/10/2010	Request filed by probation for a warrant.	52	
11/10/2010	VTP warrant issued	53	
02/16/2011	Rescript received from Appeals Court; judgment AFFIRMED	54	
02/24/2011	VTP warrant recalled (Constance M. Sweeney, Justice)		
02/24/2011	Appointment of Counsel Dale E Bass, pursuant to Rule 53		
02/24/2011	Appearance of Deft's Atty: Dale E Bass	55	
02/24/2011	Bail set: \$25,000.00 cash without prejudice (Constance M. Sweeney, Justice)		
02/24/2011	Bail: mittimus issued	56	
02/28/2011	Probation files Notice of Surrender and hearing(s) for alleged violation(s) of probation to appear on 3/1/2011	57	
03/01/2011	Bail: mittimus issued	58	
03/01/2011	After bail hearing, the Court sets bail at \$250,000.00 cash (Moriarty, J.)		
03/04/2011	Probation files Notice of Surrender and hearing(s) for alleged violation(s) of probation to appear on 4/5/2011	59	
04/05/2011	Pre-Revocation form filed	60	
04/11/2011	Probation files Notice of Surrender and hearing(s) for alleged violation(s) of probation to appear on 4/29/2011	61	
05/27/2011	Pre-Revocation form filed	62	
06/09/2011	Probation files Notice of Surrender and hearing(s) for alleged violation(s) of probation to appear on 6/16/2011	63	
06/22/2011	Probation files Notice of Surrender and hearing(s) for alleged violation(s) of probation to appear on 6/30/2011	64	
06/24/2011	Probation files Notice of Surrender and hearing(s) for alleged violation(s) of probation to appear on 6/30/2011	65	
06/30/2011	Sentence: after violation of conditions on count 1- MCI Cedar Junction for not more than 20 years and 1 day and not less than 20 years, sentence is to be served FORTHWITH and nunc pro tunc to 2/24/11 (Moriarty, J)	66	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/05/2011	Notice of appeal from sentence to Cedar Junction MCI (Walpole) filed by Ardell Innis N. 7/5/11	67	
07/12/2011	MOTION by Deft: to revise and revoke sentence	68	
07/12/2011	Affidavit in support of defendant's motion to revise and revoke sentence	68.1	
07/12/2011	Notice sent on 7/12/2011 to The Honorable C. J. Moriarty II, Justice of the Superior Court, now sitting at Worcester County		
07/29/2011	MOTION by Deft: to waive fees	69	
11/25/2011	Notice of Appearance of Deft's Atty: William W Adams	70	
11/25/2011	Request for transcript	71	
11/25/2011	Notice sent to Judge Moriarty		
11/28/2011	MOTION (P#71) allowed (Moriarty, J.) N. 11/30/11		
11/30/2011	Letter sent to Court Reporter, Elizabeth Marzano		
12/14/2011	MOTION by Deft: for Transcript	72	
12/14/2011	MOTION by Deft: for Hearing Transcript	73	
12/14/2011	Deft files Affidavit of Ardell Innis in Support of Motion for Hearing Transcript	73.1	
12/19/2011	MOTION (P#73) allowed (Moriarty, Justice). N 12/19/2011		
12/30/2011	Notice sent to Judge Moriarty re: pleading #69		
01/04/2012	MOTION (P#69) allowed (Moriarty, Justice). Copies mailed 1/4/2012		
08/02/2012	(5/23/12-At Suffolk-Appellate Division) After hearing, Judgment imposing said sentence stand and that said appeal be and is hereby dismissed (Dortch-Okara, Welch & Fabricant,JJ.)	74	
02/20/2024	Attorney appearance On this date Elizabeth Hugetz, Esq. added for Defendant Ardell Terriek Innis	75	
02/20/2024	Defendant 's Motion for post-conviction discovery	76	
02/20/2024	Affidavit of Elizabeth Hugetz in support of motion for post conviction discovery	76.1	
02/20/2024	Defendant 's Motion for new trial	77	
02/20/2024	Ardell Terriek Innis's Memorandum of law in support of defendant motion for new trial	78	
02/20/2024	Defendant 's Motion to impound volume two of the record appendix filed in support of his motion for new trial	79	
02/20/2024	Attorney appearance On this date William Woodford Adams, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Ardell Terriek Innis		
02/20/2024	Attorney appearance On this date Dale E Bass, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Ardell Terriek Innis		
02/22/2024	ORDER: Defendant's Motion for New Trial [CASE IS ASSIGNED TO JUDGE FRANCIS E. FLANNERY, FOR ANY ACTION HE MAY DEEM APPROPRIATE]	80	
02/26/2024	Endorsement on Motion for new trial, (#77.0): Other action taken Commonwealth to file opposition within 60 days. Flannery, J.		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
02/27/2024	Attorney appearance On this date Michael Locke, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth	81	 Image
04/25/2024	Commonwealth 's Motion to extend time for filing opposition (n j Flannery)	82	 Image
05/14/2024	Endorsement on Commonwealth 's Motion to extend time for filing opposition, (#82.0): ALLOWED N. by email		 Image
06/20/2024	Commonwealth 's Motion to extend time for filing opposition N. Flannery 6/20/24	83	 Image
06/25/2024	Endorsement on Motion to extend time for filing opposition, (#83.0): ALLOWED (n email) Judge: Flannery, Hon. Francis E		 Image
07/10/2024	Defendant 's response to Commonwealth's second motion to extend time for filing opposition N. Judge Flannery 7/10/2024	84	 Image
08/23/2024	Commonwealth 's Response to defendant's motion for discovery (n j Flannery)	85	 Image
08/23/2024	Commonwealth's Memorandum memorandum in opposition to defendant's motion for a new trial (n j Flannery)	86	 Image
08/23/2024	Affidavit of Assistant District Attorney Michael Locke	87	 Image
09/03/2024	Defendant 's Request for hearing on discovery motion and to take no action on motion for new trial at this time	88	 Image
09/03/2024	Affidavit of counsel in support of defendant's request for hearing on discovery motion and to take no action on motion for new trial at this time	88.1	 Image
09/09/2024	Endorsement on Defendant 's Request for hearing on discovery motion and to take no action on motion for new trial at this time, (#88.0): ALLOWED N. by email		 Image
09/27/2024	Defendant 's Motion for funds to enhance 911 call N. Judge Flannery	89	 Image
09/27/2024	Affidavit of Attorney Elizabeth Hugetz	89.1	 Image
10/18/2024	Endorsement on Motion for funds to enhance 911 call, (#89.0): ALLOWED (n email)		 Image
10/18/2024	Habeas Corpus for defendant issued to MCI - Shirley returnable for 10/22/2024 09:21 AM Hearing RE: Discovery Motion(s). PHYSICAL HABE TO ISSUE. PLEASE HAVE DEFT. HERE AT 9 AM		
10/21/2024	Habeas Corpus for defendant issued to MCI - Shirley returnable for 10/22/2024 09:21 AM Hearing RE: Discovery Motion(s). Physical HABE to issue. Please have Defendant here at 9AM.		
10/21/2024	Event Result:: Hearing RE: Discovery Motion(s) scheduled on: 10/22/2024 09:21 AM Has been: Canceled For the following reason: By Court prior to date Comments: counsel to confer re: new date and report back to clerk's office. Hon. Michael K Callan, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Susan Joaquin, Assistant Clerk Magistrate Nancy Ramos, Assistant Clerk Magistrate		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
11/14/2024	Habeas Corpus for defendant issued to MCI - Shirley returnable for 11/15/2024 09:21 AM Hearing RE: Discovery Motion(s). PHYSICAL HABE TO ISSUE. PLEASE HAVE DEFENDANT HERE AT 9 AM		
11/15/2024	Event Result:: Hearing RE: Discovery Motion(s) scheduled on: 11/15/2024 09:21 AM Has been: Not Held For the following reason: Joint request of parties Comments: no FTR Hon. Jeremy C Bucci, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Susan Joaquin, Assistant Clerk Magistrate Edward Partyka, Assistant Clerk Magistrate		
11/19/2024	Habeas Corpus for defendant issued to MCI - Shirley returnable for 11/21/2024 02:00 PM Hearing RE: Discovery Motion(s). PHYSICAL HABE TO ISSUE. PLEASE HAVE DEFT. HERE NO LATER THAN 1 PM AS HEARING WILL START @ 2 PM .		
11/20/2024	Commonwealth 's Response to defendant's supplemental motion for discovery	90	
11/21/2024	Attorney appearance On this date Clare M Enright, Esq. added for Defendant Ardell Terriek Innis	91	
11/21/2024	Defendant 's Supplemental Motion for discovery regarding undisclosed exculpatory fingerprint comparison	92	
11/21/2024	Affidavit of Elizabeth Hugetz	92.1	
11/21/2024	Affidavit of Clare Enright	92.2	
11/21/2024	Ardell Terriek Innis's Memorandum memorandum of law in support of defendant's motion for supplemental discovery regarding undisclosed exculpatory fingerprint comparison and exhibits	93	
11/21/2024	Matter taken under advisement: Hearing RE: Discovery Motion(s) scheduled on: 11/21/2024 02:00 PM Has been: Held - Under advisement Comments: FTR 1 Foley Hon. Jane E Mulqueen, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Susan Joaquin, Assistant Clerk Magistrate Edward Partyka, Assistant Clerk Magistrate		
11/22/2024	Commonwealth 's Motion to Impound Document for In Camera Review	94	
11/25/2024	Endorsement on Commonwealth 's Motion to Impound Document for In Camera Review, (#94.0): ALLOWED [impounded document in criminal vault]		
12/26/2024	Endorsement on [Defendant's] Motion for Post-Conviction Discovery, (#7.0): ALLOWED in part and DENIED in part. See Order of this date. n. via email 12/26		
12/26/2024	Endorsement on [Defendant's] Supplemental Motion for Discovery Regarding Undisclosed Exculpatory Fingerprint Comparison, (#92.0): ALLOWED in part, and DENIED in part. See Order of this date.		
12/26/2024	ORDER: on Defendant's Motion for Post-Conviction Discovery [Paper No. 76] and Supplemental Motion for Discovery Regarding Undisclosed Exculpatory	95	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Fingerprint Comparison [Paper No. 92] emailed to counsel 12/26		
01/14/2025	Habeas Corpus for defendant issued to MCI - Shirley returnable for 01/15/2025 02:15 PM Conference to Review Status. VIA ZOOM @ 2 :15 PM MEETING ID: 161 762 3470 PASSCODE: 235711		
01/15/2025	Event Result:: Conference to Review Status scheduled on: 01/15/2025 02:15 PM Has been: Held as Scheduled Comments: FTR 1 Hon. Jane E Mulqueen, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Nancy Ramos, Assistant Clerk Magistrate Shana Wilson, Assistant Clerk Magistrate		
02/20/2025	Habeas Corpus for defendant issued to MCI - Shirley returnable for 02/21/2025 02:00 PM Conference to Review Status. ZOOM HABE to issue at 2PM.		
02/21/2025	Event Result:: Conference to Review Status scheduled on: 02/21/2025 02:00 PM Has been: Held as Scheduled Comments: FTR 1 Hon. Jane E Mulqueen, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Michael T Sarnacki, Esq., Assistant Clerk Magistrate Shana Wilson, Assistant Clerk Magistrate		
04/03/2025	Ardell Terriek Innis's Memorandum of Law and reply to the Commonwealth's opposition to Ardell Innis's motion for new trial N. Judge Mulqueen	96	 Image
04/08/2025	Endorsement on Defendant's Supplemental Memorandum of Law and reply to the Commonwealth's opposition to Ardell Innis's motion for new trial, (#96.0): Other action taken Commonwealth's response due on May 5, 2025 per ----- agreed upon briefing schedule. Hearing previously scheduled for 5/27/25 in person at 2PM. Mulqueen, J. N. by email		 Image
05/05/2025	Commonwealth's Memorandum Supplemental Memorandum in opposition to Defendant's Mass. R. Crim. P. 30(b) motion for new trial N. Judge Mulqueen 5/5/25	97	 Image
05/12/2025	Event Result:: Motion Hearing scheduled on: 05/27/2025 09:23 AM Has been: Not Held For the following reason: Transferred to another session Hon. Michael K Callan, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Brian Dolaher, Assistant Clerk Magistrate Susan Joaquin, Assistant Clerk Magistrate		
05/22/2025	Habeas Corpus for defendant issued to MCI - Shirley returnable for 05/27/2025 02:00 PM Motion Hearing. PHYSICAL HABE TO ISSUE. PLEASE		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	HAVE DEFT. HERE AT 9 AM		
05/27/2025	Event Result:: Motion Hearing scheduled on: 05/27/2025 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Jane E Mulqueen, Presiding Staff: Alyson Yorlano, Assistant Clerk Magistrate		
06/20/2025	Habeas Corpus for defendant issued to MCI - Shirley returnable for 06/23/2025 09:00 AM Motion Hearing. Physical habe to issue. Please have Deft. here at 9 AM		
06/23/2025	Matter taken under advisement: Motion Hearing scheduled on: 06/23/2025 09:00 AM Has been: Held - Under advisement Comments: FTR 3- Aarons Hon. Jane E Mulqueen, Presiding Staff: Susan Joaquin, Assistant Clerk Magistrate		
08/12/2025	Habeas Corpus for defendant issued to MCI - Shirley returnable for 08/13/2025 02:00 PM Conference to Review Status. Via Zoom @ 2 PM Meeting ID: 161 2460 9521 Passcode: 197417		
08/13/2025	Event Result:: Conference to Review Status scheduled on: 08/13/2025 02:00 PM Has been: Not Held For the following reason: By Court prior to date Hon. Jane E Mulqueen, Presiding Staff: Edward Partyka, Assistant Clerk Magistrate		
08/27/2025	Habeas Corpus for defendant issued to MCI - Shirley returnable for 09/02/2025 02:00 PM Motion Hearing. VIA ZOOM @ 2PM Before Judge Mulqueen Zoom info: 161 2460 9521 Password: 197417 HABE CANCELLED.		
08/28/2025	Event Result:: Motion Hearing scheduled on: 09/02/2025 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Jane E Mulqueen, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Nancy Ramos, Assistant Clerk Magistrate Michael T Sarnacki, Esq., Assistant Clerk Magistrate		
09/10/2025	Habeas Corpus for defendant issued to MCI - Shirley returnable for 09/11/2025 09:00 AM Motion Hearing. Via Zoom @ 9 AM Before Judge Mulqueen Zoom info: 161 2460 9521 Password: 197417		
09/11/2025	Event Result:: Motion Hearing scheduled on: 09/11/2025 09:00 AM Has been: Held via Video/Phone Comments: FTR-Ctrm5-L.Sirois. Held via zoom. Hon. Jane E Mulqueen, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Nancy Ramos, Assistant Clerk Magistrate Michael T Sarnacki, Esq., Assistant Clerk Magistrate		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
09/11/2025	Defendant 's Motion for Funds for Psychologist (Eyewitness Identification Expert) n. Judge Mulqueen 9/11 via email	98	 Image
09/11/2025	Affidavit of Attorney Elizabeth Hugetz	98.1	 Image
09/12/2025	Endorsement on Motion for Funds for Psychologist (Eyewitness Identification Expert), (#98.0): ALLOWED n. via email 9/12		 Image
11/13/2025	Commonwealth 's Motion to preclude inadmissible expert testimony	99	 Image
11/18/2025	Habeas Corpus for defendant issued to MCI - Shirley returnable for 11/19/2025 09:00 AM Hearing on Motion for New Trial. Physical HABE to issue. Please have Defendant here BY 9AM.		Image
11/19/2025	Matter taken under advisement: Hearing on Motion for New Trial scheduled on: 11/19/2025 09:00 AM Has been: Held - Under advisement Comments: Held in Session 5- Courtroom 3 FTR 3- T. Foley Hon. Jane E Mulqueen, Presiding Staff: Danielle Cruz, Assistant Clerk Magistrate Brian Dolaher, Assistant Clerk Magistrate Shana Wilson, Assistant Clerk Magistrate		
11/19/2025	Endorsement on Motion to preclude inadmissible expert testimony, (#99.0): ALLOWED as to opinion on reliability. The court will address individual objection as they arise. (n email) Judge: Mulqueen, Hon. Jane E		 Image
11/19/2025	Defendant 's Motion to admit exhibits	99.1	 Image
12/01/2025	General correspondence regarding Letter From CPCS addressed to Judge Mulqueen	100	 Image
07/31/2026	Findings of Fact and Rulings of Law: Ord on Defendant's Motion for a New Trial Judge: Mulqueen, Hon. Jane E	101	 Image
07/31/2026	Notice of appeal filed RE: Denial on Deft.'s motion for new trial Applies To: Innis, Ardell Terriek (Defendant); Hugetz, Esq., Elizabeth (Attorney) on behalf of Innis, Ardell Terriek (Defendant)	102	 Image
07/31/2026	Endorsement on Defendant's Motion for a New Trial, (#77.0): DENIED See Findings of Fact, Rulings of Law and Order of this date. Mulqueen, J.		 Image
08/10/2026	List of exhibits	103	 Image
08/19/2026	CD of Transcript of 06/23/2025 09:00 AM Motion Hearing, 11/19/2025 09:00 AM Hearing on Motion for New Trial received from Amie Camilleri, CSR, Certified Court Reporter Ask-Amie.com amie@ask-amie.com.		Image
08/19/2026	Court Reporter FTR/OTS is hereby notified to prepare one copy of the transcript of the evidence of 11/19/2025 09:00 AM Hearing on Motion for New	104	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Trial, 09/11/2025 09:00 AM Motion Hearing, 06/23/2025 09:00 AM Motion Hearing		
08/19/2026	CD of Transcript of 09/11/2025 09:00 AM Motion Hearing received from Amie Camilleri, CSR, Certified Court Reporter Ask-Amie.com amie@ask-amie.com.		
08/19/2026	Attorney appearance On this date Michael Locke, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Commonwealth		
08/19/2026	Attorney appearance On this date Katherine E McMahon, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth		
08/19/2026	Appeal: Statement of the Case on Appeal (Cover Sheet). Applies To: Commonwealth (Prosecutor); Innis, Ardell Terriek (Defendant); McMahon, Esq., Katherine E (Attorney) on behalf of Commonwealth (Prosecutor); Hugetz, Esq., Elizabeth (Attorney) on behalf of Innis, Ardell Terriek (Defendant)	105	 Image
08/19/2026	Notice of assembly of record sent to Counsel Applies To: Commonwealth (Prosecutor); Innis, Ardell Terriek (Defendant); McMahon, Esq., Katherine E (Attorney) on behalf of Commonwealth (Prosecutor); Hugetz, Esq., Elizabeth (Attorney) on behalf of Innis, Ardell Terriek (Defendant)	106	 Image
08/20/2026	Notice of Entry of appeal received from the Appeals Court	107	 Image

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Disposed by Jury Verdict	06/30/2011	

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT
CRIMINAL ACTION
No. 0679 CR 0881

HAMPDEN COUNTY
SUPERIOR COURT
FILED

JUL 31 2026

COMMONWEALTH

vs.

ARDELL INNIS

Anna S. G...
CLERK OF COURTS

**FINDINGS OF FACT, RULINGS OF LAW, AND ORDER ON DEFENDANT'S MOTION
FOR NEW TRIAL**

On July 13, 2007, a jury found the defendant, Ardeell Innis (Innis or defendant), guilty of home invasion, in violation of G.L. c. 265, §18C, and assault and battery, in violation of G.L. c. 265, §13A(a).¹ This matter is before the court on defendant's motion for new trial wherein he argues that (1) his trial and appellate counsel afforded him ineffective assistance of counsel, (2) the Commonwealth failed to disclose an exculpatory fingerprint comparison and (3) recent developments in eyewitness testimony constitute newly discovered evidence casting doubt on his convictions. An evidentiary hearing² was held on November 19, 2026, at which time the court heard the testimony of Dr. Nancy Franklin and admitted 32 exhibits into evidence. For the reasons that follow, Innis' Motion for a New Trial will be denied.

¹ The defendant was acquitted of armed robbery while masked.

² The court ordered an evidentiary hearing on the eyewitness identification claim only. The defendant had not asked for an evidentiary hearing on his Brady claim, and the court declined to order an evidentiary hearing on the ineffective assistance of counsel claim, but did take into account the seven affidavits filed on behalf of Innis on that claim.

BACKGROUND

On July 18, 2006, a Hampden County grand jury returned indictments charging Innis with one count each of home invasion, in violation of G.L. c. 265, §18C, armed robbery while masked, in violation of G.L. c. 265, §17, and assault and battery, in violation of G.L. c. 265, §13A(a). After arraignment on August 7, 2006, attorney Perman Glenn III (Glenn) entered his appearance for Innis. A motion to suppress the victim's identification of Innis was filed on January 24, 2007, but withdrawn and not litigated. On March 21, 2007, the defendant filed a motion to file a late notice of alibi. Innis withdrew this notice of alibi at trial, midway through his cross-examination of Clement.

On July 13, 2007, a jury found the defendant guilty of the home invasion and assault and battery charges and acquitted the defendant of armed robbery while masked. The trial judge, Moriarty, J. (trial judge), sentenced Innis to two and one-half years in the Hampden County House of Correction on the assault and battery charge and seven years of probation, from and after his incarceration, on the home invasion conviction. The trial judge retained personal jurisdiction of the case. The defendant's convictions were affirmed by the Massachusetts Appeals Court.³ See Commonwealth v. Innis, 78 Mass. App. Ct. 1109, 2010 WL 4608676 at *1 (2010) (unpublished decision).

On October 27, 2010, the defendant was charged in the Eastern Hampshire District Court with possession with intent to distribute a class D substance, in violation of G.L. c. 94C, §32C(a); improper storage of a firearm, in violation of G.L. c. 140, §131L; possession of a firearm without an FID card, in violation of G.L. c. 269, §10(h); and possession of ammunition without an FID card, in violation of G.L. c. 269, § 10 (h)(1). As a result of these new criminal

³ On appeal the defendant raised error in the burden of proof instruction and error in the discharge of a deliberating juror.

charges, the Hampden Superior Court Probation Department filed a notice of violation on November 2, 2010. On June 30, 2011, the trial judge found the defendant in violation of his probation on the home invasion charge and sentenced him to not less than twenty years and not more than twenty years and one day in state prison.⁴ On August 2, 2012 the defendant's appeal of his sentence was dismissed by the Appellate Division.

Glenn passed away in 2011. The trial judge retired in 2021. On February 20, 2024, the defendant filed the instant motion.

STATEMENT OF FACTS⁵

The victim, Althea Clement (Clement or victim), resided on Dimmick Street in Springfield. She was the manager of a savings club, or a "partner," which consisted of approximately thirty-five friends and family and in which she had been involved for over twenty years. Clement was responsible for collecting all the money and then distributing the money to one member of the club on a weekly, rotating basis.

On Sundays, club members would frequently come to Clement's house and drop off their money. On April 23, 2006, Clement and her husband attended church services and returned home at approximately 12:30 PM. After a light lunch together, Clement's husband left, at approximately 12:50, for a lodge meeting in Boston. At around 1:30 PM, Clement was visited by her sister and her sister's husband. During their approximately half hour visit, several other visitors came and dropped off their money to Clement. After Clement's sister and husband left at around 2:15, Clement was visited by Sonya⁶ Innis,⁷ who was a club member and had been so

⁴ Under the home invasion statute's minimum sentencing requirement, if the trial judge imposed a committed sentence on the probation violation, the sentence was required to be at least twenty years in length. The trial judge had the option to reprobate the defendant on the home invasion charge.

⁵ The facts are taken from the trial transcript.

⁶ Christine Innis was known and referred to as Sonya.

⁷ As Sonya shares the same last name as the defendant, she will be referred to by her first name.

for approximately twelve years. Clement and Sonya were friendly, as Sonya frequently dropped off her money personally but sometimes Sonya's daughter or a young man would drop off Sonya's share for her. On April 23, 2006, Sonya dropped off her money but could not stay, explaining that she was getting a ride from someone. After Sonya left, Clement received a few more visitors, the last of which left around 2:50 – 2:55 PM, leaving Clement alone in the house. Clement placed the money she had received from club members on the bed in a guest bedroom and counted approximately seven thousand dollars.

While Clement was counting the money, her doorbell rang. She opened her solid wood front door and looked out the glass window on the top half of her storm door, seeing a young Black male standing at the bottom of her front steps. This male was approximately five foot six or five foot seven inches tall and clean shaven. Clement had never seen this male before. Clement was within five feet of this male and got a good look at his face. Clement and this man looked each other in the eye. When she asked the male if she could help him, he told her, "Sonya sent me." Clement then felt a push and for the first time saw a second man who had opened the storm door. This man was wearing a grayish dark ski mask. He pushed Clement into the den as the first man entered the house and pulled down a dark colored mask to cover his face. Clement noticed that both men had guns and she realized she was being robbed. She freaked out and started screaming. The first man demanded "the money, now." After Clement feigned ignorance, the man clicked the gun and Clement freaked out. Clement then told the men she would give them the money if they did not kill her and she walked into the bedroom where she had been counting money. The money was in clear view and the first man started putting the money in his pockets. The second man emptied a shoe box and began filling the box with the cash. Clement was seated in a chair and believed she was having a heart attack. After securing

all of the money, the men exited the house. Clement ran to her living room and looked out the window to see in which direction the men were running. Clement then called the police, who arrived approximately five minutes later.

The police took Clement to the police station and she looked at approximately 2,500 photographs on a computer.⁸ She did not identify anyone from these photographs.

Later that evening, the police returned to Clement's house and showed her a photo array. Clement was given eight photographs and asked to look at each photograph individually. She looked through the pile of photographs four or five times and kept returning to the same photograph, which was a photograph of the defendant. She identified the defendant with seventy percent confidence.

Approximately a week later, Clement participated in another photographic array, viewing the same eight photographs she had seen before and identified the defendant as the man she saw out of her front door. She stated that the photograph was definitely the man who she spoke to at her front door on April 23, 2006. At the trial, Clement identified the defendant as the young Black male she saw outside of her front door on the day of the home invasion. The jury found the defendant guilty of home invasion and assault and battery.

FINDINGS OF FACT

Following an initial review of Innis' Motion for New Trial, the undersigned determined that the motion raised sufficiently substantial issues and presented an adequate factual proffer in support thereof to warrant an evidentiary hearing on the issue of newly discovered evidence regarding eyewitness identification. Accordingly, on November 19, 2025, the court held a

⁸ On direct examination, Clement estimated that she looked at 200 or more photographs. Cross-examination clarified that she looked at more than that and testimony of Springfield Police Officer Trent Duda was that Clement looked at a little over 2,500 photographs.

hearing addressing the issue. The defendant called Dr. Nancy Franklin. The Commonwealth did not call any witnesses. There were 32 documentary exhibits introduced. The Court's findings of fact, drawn from the evidence that the undersigned credits and the reasonable inferences therefrom, follow.

Nancy Franklin (Franklin) was an Associate Professor of Psychology at Stony Brook University in New York for thirty years. She retired in 2019 and is now an eyewitness identification and memory consultant. She has a B.A. in Psychology from the University of California, Santa Barbara, and a Ph.D. in Psychology from Stanford University. Franklin has given expert testimony in approximately one hundred cases. She also lectures in educational settings, including a lecture to the Massachusetts Supreme Judicial Court on emerging trends in eyewitness identification. This court finds that Franklin is qualified to testify as an expert on the subject of eyewitness identification and memory.

Franklin was asked to review discovery materials and evaluate the reliability of Clement's identification of Innis. She reviewed police reports, grand jury testimony, trial testimony, photographs, witness statements,⁹ and recently authored affidavits and she prepared a report.¹⁰

Explaining terms contained in her report, Franklin described reliable versus unreliable identifications as an expression of risk, explaining that an unreliable identification is one that has a measurable risk of being inaccurate.

Franklin testified that human memory does not act like a video camera, which she stated is a common misperception. Memory is quite incomplete, as an individual only notices some

⁹ Over the Commonwealth's objection, the court admitted these materials as Exhibits 3 through 16.

¹⁰ Franklin's report was admitted as Exhibit 2. On the record, Franklin corrected a mistake on Page 4, Paragraph 14 of her report. The date of the first photographic array was mistakenly stated as May 3, 2006. The correct date is April 23, 2006.

subset of the details of a situation, and only a subset of that makes it into memory at all. There is no guarantee that all of those details are accurate and then forgetting sets in immediately.¹¹ Additionally, memory is designed to fill in details at the back end and people are generally not good at “source monitoring,” which is the ability to distinguish real versus filled in details. Franklin explained that what is expected is that memory gets worse over time, although people can report it in a more complete way and people can become more confident in their memory because of post-event processes.

Franklin opines that numerous factors present in this case compromise the reliability of Clement’s identification of Innis. Relevant to Clement’s identification is the difficulty of accurately identifying a stranger or unfamiliar face.¹² Experiments have shown that, even under optimal viewing circumstances, correct identifications are made only about fifty percent of the time. Optimal viewing conditions for a crime victim include good lighting, plenty of viewing time, close up view, no obstruction of the face, nothing to distract from viewing the face, same race and no stress. Clement had a limited opportunity to observe the suspect’s face while speaking to him through the window and when she opened the door to speak to him.

Additionally, Franklin stated that people who have been seen a handful of times show the same kind of identification performance by witnesses who are seen with people who have never been seen before. Indeed, she opines that having been seen a handful of times may put an innocent person at increased risk because the witness has not gotten to a point to form a detailed enough memory to allow them to uniquely identify the person to the exclusion of all others but the witness has gotten to a point where that face is likely to be the one that pops out at the

¹¹ Franklin stated that fifteen percent of detail is lost in the first ten minutes after an event.

¹² Clement testified that she had never seen the perpetrator before. Several affidavits filed in support of this motion state that Innis, on occasion, accompanied his stepmother Sonya when she dropped off money to Clement.

witness. She explained that such a person is at a higher risk of being identified as the perpetrator during an identification procedure because the witness does not know where they know the face from and therefore may misplace where they know the face from. Clement testified that she did not know the person at her door and had not seen him before.

Some studies have shown that a one minute or longer time frame for viewing a suspect leads to a higher rate of correct identification. It is unknown for how long Clement was conversing with the perpetrator. She saw him at the door. She asked, "May I help you?" He replied, "Sonya sent me." Clement began to say, "Why would she send you when - " At that point, she was interrupted by a push.

Stress increases rates of misidentification. After seeing the second man and noting that he was masked, Clement realized she was being robbed and was obviously extremely stressed. The presence of weapons similarly affects the accuracy of identification, as when a weapon is present it draws attention and reduces the cognitive resources that can be devoted to the processing of the face of the perpetrator. As a result, memory for the perpetrator's face is worse. The weapon in this case was observed after Clement's initial observation of and brief conversation with the suspect.

Like with weapons, the presence of multiple perpetrators divides the witness's attention and can affect the accuracy of an identification. As noted, Clement faced two intruders but did not know of the presence of the second intruder when she was face to face conversing with the defendant.

Any object obfuscating the perpetrator's face influences the accuracy of an identification. Here, masks were used, but the defendant was unmasked while Clement viewed him at her door and briefly conversed with him.

Memory can be contaminated by post-event suggestion. Factors making an initial memory more vulnerable include an initially weak memory and age of the witness. In a law enforcement context, memory can be contaminated by interactions with police and civilians who have opinions about who the perpetrator may be. The nature of the identification procedure is very important. It is also very important that law enforcement take a statement from a witness immediately and certainly before an identification procedure. Conducting more than one identification procedure increases the risk that a face seen in the first procedure will be chosen in the subsequent identification. It is problematic if the reaction of law enforcement after a procedure leads the witness to be more confident than they otherwise would have been. Any feedback after an identification spikes confidence. Whether the administrator of an identification procedure is blind affects the accuracy of any identification, but even an officer who does not know who the suspect is can influence witnesses. Franklin considers in court identification of a defendant to be “theatre.”

Different people have different memory abilities and factors influencing accuracy of memory affect different people’s memories differently.

RULINGS OF LAW

Pursuant to Mass. R. Crim. P. 30 (b), the court may grant a new trial if it appears that justice may not have been done. Commonwealth v. Eagles, 491 Mass. 210, 215 (2023); Commonwealth v. Lessieur, 488 Mass. 620, 627 (2021). The decision to allow a new trial lies within the sound discretion of the motion judge. Eagles, 491 Mass. at 215; Commonwealth v. Jacobs, 488 Mass. 597, 600 (2021).

In support of this motion, Innis has advanced three legal challenges. These contentions are addressed in turn.

NEWLY DISCOVERED EVIDENCE

The defendant contends that recent developments in eyewitness testimony constitute newly discovered evidence casting doubt on his convictions. Under Rule 30, a judge may order a new trial where newly discovered evidence casts real doubt on the justice of the conviction. Eagles, 491 Mass. at 2015-217; Commonwealth v. Rodriguez-Nieves, 487 Mass. 171, 177 (2021). The judge must determine whether the new evidence is material and credible, and whether it carries a sufficient measure of strength in support of the defendant's position. See Commonwealth v. Cowels, 470 Mass. 607, 617 (2015); Commonwealth v. Shuman, 445 Mass. 268, 272 (2005). To prevail on a motion for new trial based on new evidence, a defendant must show both that the evidence is newly discovered and that its absence was prejudicial. Commonwealth v. Mercado, 495 Mass. 763, 766 (2025), citing Commonwealth v. Gaines, 494 Mass. 525, 538-539 (2024). "The judge decides not whether the verdict would have been different, but rather whether the new evidence would probably have been a real factor in the jury's deliberations." Id.

Innis contends that Franklin's testimony suggesting the unreliability of Clement's identification of the defendant constitutes newly discovered evidence requiring a new trial. Evidence is newly discovered if it was both unknown to the defendant and counsel at the time of the trial and was not reasonably discoverable at that time. Commonwealth v. Ellis 475 Mass. 459, 472 (2016). Scientific evidence is newly discovered if it did not exist, or if it differs significantly from the principles relied upon at the time of trial. See Commonwealth v. Rosario, 477 Mass. 69, 76 (2017). See also Commonwealth v. Sullivan, 469 Mass. 340, 350 n.6 (2014) (forensic evidence is newly available if it was unavailable at the time of trial because a specific methodology had not yet been developed or gained acceptance by the courts). Expert testimony

is not newly discovered, however, simply because recent research may lend more credibility to an expert's opinion than was or could have been presented at trial. Shuman, 445 Mass. at 275. See also Commonwealth v. LeFave, 430 Mass. 169, 181 (1999) (noting tension between constantly evolving nature of science and doctrine of finality). "To hold otherwise would provide convicted defendants with a new trial whenever they could find a credible expert with new research results supporting claims that the defendant made or could have made at trial." Shuman, 445 Mass. at 275.

The Commonwealth contends that Franklin's testimony does not constitute newly discovered evidence largely due to the fact that she relies on research conducted and reported before the defendant's 2007 trial. Although a well taken point, the court notes that the Supreme Judicial Court has acknowledged that "even as of 2013 the reliability of eyewitness identifications was not an issue commonly raised at trial. Moreover, it was not until 2015 that we had a sufficient basis upon which to catalog the advancements in eyewitness identification research and prospectively incorporate it into our own jurisprudence." Mercado, 495 Mass. at 767. With that in mind, this court concludes that the expert identification testimony proffered by Franklin qualifies as newly discovered for purposes of the present motion.

To demonstrate prejudice, a defendant must show that "the [new] evidence would probably have been a real factor in the jury's deliberations, such that its absence casts real doubt on the justice of the conviction" (citation and quotation omitted). Id., citing Gaines, 494 Mass. at 539. Newly discovered evidence that tends merely to impeach the testimony of a witness will ordinarily not warrant a new trial. Ellis, 475 Mass. at 480; Commonwealth v. Ortiz, 393 Mass. 523, 538 (1984). On the other hand, evidence that seriously undermines the credibility of a key prosecution witness may warrant a new trial in a case that was otherwise weak overall. See

Commonwealth v. Upton, 484 Mass. 155, 168 (2020); Cowels, 470 Mass. at 620. Determining whether, on balance, newly discovered evidence warrants a new trial is thus left to the sound discretion of the motion judge. Upton, 484 Mass. at 168.

Innis argues that the testimony of an expert like Franklin would undermine Clement's eyewitness identification, by explaining the various research-based factors that suggest unreliability. There was no physical evidence tying Innis to the crime. Innis' conviction thus rested on the testimony of Clement coupled with the statement "Sonya sent me." This then is the context in which the materiality of expert evidence tending to discredit the eyewitness identification of Innis must be evaluated. See Commonwealth v. Santoli, 424 Mass. 837, 842 (1997) (noting that exclusion of expert testimony is most likely to be error where there is little or no evidence to corroborate eyewitness identification); Commonwealth v. Watson, 455 Mass. 246, 258 (2009) (where there was additional evidence to corroborate eyewitness identification, exclusion of expert testimony does not require new trial).

Although not overwhelming, there was other evidence, discounted by Innis as weak circumstantial evidence, connecting the defendant. That evidence included the statement "Sonya sent me"; the fact that Sonya Innis was a member of the savings club; and the fact that the defendant who fit the initial description of the perpetrator given by Clement was Sonya's stepson.

Franklin made some assumptions not completely supported by the evidence in the case. Regarding Clement's opportunity to view the perpetrator's face, Franklin described it as lasting only seconds. Although she acknowledged that Clement testified that she had a clear view of the perpetrator, she did not mention or apparently account for how close Clement was to the defendant, that Clement testified that she got a good look at defendant's face, she and the

defendant looked each other in the eyes, no weapon was displayed at the time she was looking at the defendant, and that she was only aware of the defendant and not another person at the time she was looking at him. Several of the factors cited by Franklin as affecting the reliability or accuracy of identification, including weapons focus, multiple perpetrators, disguises, and stress, although present in this case, were present only after Clement had the opportunity to view the perpetrator's face up close and look at him in the eye while speaking to him. Not mentioned by Franklin, but factors supporting the reliability of the identification are that Clement and Innis were of the same race and that Clement's viewing of Innis took place in daylight, in good lighting conditions.

At trial, Glenn impeached the reliability of the identification by Clement. He brought to the attention of the jury and argued forcefully not only the possibility of a misidentification but that indeed Clement mistakenly identified Innis. He presented to the jury factors Franklin described, including how stressful the situation was, that Clement needed glasses, that she had a gun in her face, and argued that those circumstances affected her ability to perceive and the accuracy of her identification. He pointed out inconsistencies in Clement's description of the perpetrators and their clothing. He stressed that one can be confident but not accurate.

Misidentification was a major theme of the defense. See Commonwealth v. Ayala, 481 Mass. 46 (2018) (absence of eyewitness identification expert did not require new trial, where defense counsel vigorously cross-examined eyewitness on poor lighting conditions, discrepancies in his description of suspect, the impact of his post-traumatic stress disorder and bipolar disorder, and argued in closing that witnesses identification was unreliable due to these factors); Watson, 455 Mass. at 258 (absence of eyewitness identification expert did not require new trial, as defense counsel aggressively cross-examined eyewitness on suggestive identification procedure and

effect of trauma of incident, impaired memory, and taint of heavy medication on ability to identify suspect, and then forcefully argued those factors in closing).

The court gave the Rodriguez¹³ instruction, as was required, which focused the jury on the importance of the identification in the case, how they should scrutinize eyewitness identification testimony, and how circumstances present at the time of identification can influence memory. This instruction alerted the jury to the need to consider whether the eyewitnesses who testified at trial may have made an honest but mistaken identification and highlighted various factors and variables bearing on the general reliability of the identification.

Taking all matters into fair consideration, this was not the type of case in which the eyewitness identification was so weak and so unsupported that expert testimony explaining the relevant factors undermining their reliability was necessary to assist the jury in its task of determining whether Innis was the perpetrator of the crime. See Commonwealth v. Denson, 489 Mass. 138, 145 (2022) (exclusion of eyewitness expert testimony was not abuse of discretion where studies that expert highlighted were not sufficiently related to facts surrounding the identifications at issue).

Under all of these circumstances, the court concludes that newly discovered expert evidence of the sort proffered by Franklin would not have been a real factor in the jury's deliberations. Franklin's hearing testimony does not cast doubt on the justice of Innis' conviction, and a new trial is not warranted.

¹³ Commonwealth v. Gomes, 470 Mass. 352 (2015), which introduced a new jury instruction regarding eyewitness testimony, had not been decided at the time of Innis' trial. At the time of trial, the instruction adopted by the Supreme Judicial Court in Commonwealth v. Rodriguez, 378 Mass 296, 310-311 (1979), was required.

FAILURE TO DISCLOSE EXCULPATORY EVIDENCE

As part of discovery related to the instant motion, Innis discovered a report concerning a fingerprint comparison conducted during the investigation of the home invasion. Springfield Police detectives lifted two fingerprints from an envelope that Clement kept money in, compared them to Innis' ten-print card and eliminated him as the source of the prints. The envelope was not able to be obtained in the discovery related to this motion, having been lost or destroyed and no documentation of the process used to make the fingerprint comparison was retained.

For a defendant to prevail on a new trial claim based on the nondisclosure of exculpatory evidence, he must establish not only that the evidence was not disclosed, but also "(1) that the evidence [was] in the possession, custody or control of the prosecutor or a person subject to the prosecutor's control; (2) that the evidence is exculpatory; and (3) prejudice." Commonwealth v. Barry, 481 Mass. 388, 399 (2019) (internal quotations and citations omitted). The prejudice analysis differs based on whether the defendant made a specific request for the type of evidence that was later found to not have been disclosed. Id. at 399-400. Where the evidence falls into a category of evidence requested pre-trial, the defendant must establish that a substantial basis exists for claiming prejudice from the nondisclosure. Commonwealth v. Pope, 489 Mass. 790, 801 (2022). In determining prejudice, the relevant question is "whether [the court] can be confident that, even if the prosecution had supplied the report to the defendant [] in a timely fashion, the report or available evidence disclosed by it would not have influenced the jury." Commonwealth v. Laguer, 448 Mass. 585, 594 (2007), quoting Commonwealth v. Healy, 438 Mass. 672, 680 (2003).

Innis was indicted after the 2004 amendments to Mass. R. Crim. P. 14. Automatic discovery provisions at the time of Innis' 2007 trial required the Commonwealth to provide all "material and relevant police reports." Mass. R. Crim. P. 14(a)(I)(vii), as amended 444 Mass. 1501 (2005). As the report of the fingerprint comparison is a relevant police report, Innis is considered to have requested the report pre-trial and is thus entitled to the "prejudicial" standard. See Pope, 489 Mass. at 801.

The Commonwealth has conceded that Innis has carried his burden of establishing that the report was not disclosed by the Commonwealth pre-trial. The Commonwealth further conceded that the report was in the possession, custody or control of an individual under the prosecutor's control. The Commonwealth contends that the fingerprint comparison was not exculpatory and its nondisclosure did not prejudice the defendant's defense. This court agrees.

Clement testified before the grand jury that neither perpetrator touched the manila envelope and she testified at both the grand jury and at trial that the money was in piles on her bed and not in the envelope when the home invaders began stuffing it in their pockets and a shoe box. If neither perpetrator touched the envelope, there would be no expectation that either of the perpetrators' fingerprints would be on the envelope. The fact that the defendant's fingerprints were not on the envelope is, therefore, not exculpatory.

When trial commenced, Innis had knowledge that the Commonwealth had no forensic evidence tying him to Clement's house and he attacked the absence of such evidence at trial. His claim that the fingerprint could have been from a third-party culprit is speculative as the evidence established that Clement had collected money from a number of people that day who may have touched the envelope, including Clement herself. See Laguer, 448 Mass. at 592-593 (motion judge did not abuse his discretion where he found that "the lack of evidence that the

fingerprints were left on the telephone at the time of the crime deprived them of probative value”). There is no evidence suggesting that the fingerprint was left at the time of the home invasion or by either of the perpetrators. “[T]he mere existence of the fingerprints by itself, without other evidence or explanation, creates no reasonable basis for believing a third-party suspect would have been revealed.” *Id.* at 597. The defendant was not prejudiced by the nondisclosure of the fingerprint report.

INEFFECTIVE ASSISTANCE OF COUNSEL

Innis claims that he is entitled to a new trial because he was deprived of his federal and state right to effective assistance of counsel. Innis claims prior counsel’s deficient performance resulted in the jury never learning of available affirmative evidence of two separate but mutually compatible defenses: alibi and mistaken identification.

To analyze claimed ineffective assistance under art. 12 of the Massachusetts Declaration of Rights, the court’s inquiry asks whether there has been serious incompetency, inefficiency or inattention on the part of trial counsel, conduct falling measurably below that expected from an ordinary fallible lawyer, and whether such dereliction likely deprived the defendant of an otherwise available and substantial ground of defense. *Commonwealth v. Tavares*, 491 Mass. 362, 365 (2023); *Commonwealth v. Ng*, 489 Mass. 242, 250 (2022). Where the defendant seeks a new trial based on ineffective assistance of counsel, he bears the burden of proving a level of ineffectiveness that undermines confidence in the outcome of the trial. *Ng*, 489 Mass. at 249; *Commonwealth v. Kolenovic*, 471 Mass. 664, 673 (2015). The defendant must show that better work by counsel would have accomplished something material for the defense. *Ng*, 489 Mass. at 250. Innis has not met this standard.

Where a claim of ineffective assistance is based on a tactical or strategic decision, a reviewing court determines whether the decision by counsel was manifestly unreasonable when made, with deference given to trial counsel's actions to avoid characterizing a merely unsuccessful defense as an unreasonable one. Kolenovic, 471 Mass. at 673-674; Commonwealth v. Mizrahi, 100 Mass. App. Ct. 690, 696 (2022). "The decision '[w]hether to call a witness is a strategic decision.'" Commonwealth v. Jacobs, 488 Mass. 597, 602 (2021), quoting Commonwealth v. Morales, 453 Mass. 40, 48 (2009). A strategic decision is only manifestly unreasonable if lawyers of ordinary training and skill in criminal law would not consider such a decision competent. Jacobs, 488 Mass. at 601. See also Commonwealth v. Kirkland, 491 Mass. 339, 346 (2023) ("[O]nly strategy and tactics which lawyers of ordinary training and skill in the criminal law would not consider competent rise to the level of manifestly unreasonable"). Counsel is not ineffective for failing to call an alibi witness whose credibility is in question and whose testimony may do more harm to the defendant's case than good. Jacobs, 488 Mass. at 602-603.

"Relief on a claim of ineffective assistance based on the trial record is the weakest form of such a claim because it is 'bereft of any explanation by trial counsel for his actions and suggestive of strategy contrived by a defendant viewing the case with hindsight.'" Commonwealth v. Gorham, 472 Mass. 112, 116 n.4 (2015), quoting Commonwealth v. Peloquin, 437 Mass. 204, 210 n. 5 (2002). "Relief may be afforded on such a claim 'when the factual basis of the claim appears indisputably on the trial record.'" Id., quoting Commonwealth v. Zinser, 446 Mass. 807, 811 (2006). The motion having been filed so many years after the trial and Glenn having passed away, the trial judge having retired, and the prosecutor having been elevated to the bench, no one with personal knowledge is available to properly analyze whether

trial counsel was ineffective. See Commonwealth v. Francis, 485 Mass. 86, 105 (2020) (“This great passage of time has huge consequences. Even if witnesses have not died or disappeared, their memories have certainly dissipated”); Jacobs, 488 Mass. at 603 (defendant bears consequences of waiting to bring forward new trial claim).

There are simple, strategic explanations as to why Glenn did not call the summonsed alibi witnesses. He may not have credited Innis’ alibi and feared that the jury would not either, or he may have believed that their testimony would have done more harm than good.

This court has considered the credibility of the affidavits in light of the affiants’ (who are nearly all family members) motives and affords them little weight. See Commonwealth v. Robinson, 493 Mass. 718, 726 n.7 (judge may consider credibility of affidavits in light of family members’ motives and afford them little weight). The defendant’s own submissions in his motion for new trial reveal the dangers of putting forth his alibi defense at trial, as noted in the Commonwealth’s opposition.

Under the circumstances, the decision to forego an alibi defense and focus on the defense of misidentification was not one that a reasonable lawyer would deem incompetent, Jacobs, 488 Mass. at 601, was not manifestly unreasonable, and did not deprive Innis of a substantial defense.

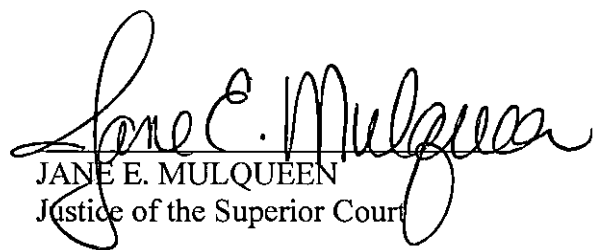
The standard for analyzing a claim of ineffective assistance of appellate counsel is the same as the standard for analyzing a claim of ineffective assistance of trial counsel. Commonwealth v. Phinney, 446 Mass. 155, 162-163, 167-168 (2006). As Innis has failed to establish that trial counsel was ineffective for failing to call witnesses or investigate his defense, he cannot establish that it was ineffective for his appellate counsel to fail to raise such a claim on appeal. See Commonwealth v. Glover, 459 Mass. 836, 837 n.2 (2011) (“By concluding that the

defendant's trial counsel was not ineffective, we also conclude that his appellate counsel was not ineffective for failing to raise this issue at the hearing on the first motion for a new trial").

Nor was appellate counsel ineffective for failing to challenge the lack of eyewitness identification testimony or the instruction given. At the time the appeal was filed, Commonwealth v. Gomes, 470 Mass. 352 (2018), had not yet been decided and the trial judge's instructions followed required practice under Rodriguez, 378 Mass. at 310-311. Moreover, in Gomes, the SJC explicitly stated that its holding was prospective only. Gomes, 470 Mass. at 376. Any claim attacking the identification instructions would have been futile. See Commonwealth v. Boria, 460 Mass. 249, 253 (2011) (appellate counsel was not ineffective where claim would have been futile at the time of appeal).

ORDER

For the foregoing reasons, defendant's motion for new trial is **DENIED**.


JANE E. MULQUEEN
Justice of the Superior Court

DATE: July 31, 2026