COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Appeals Court No. 2025-P-0736

Commonwealth)
)
v.)
)
Craig Hood)

DEFENDANT, CRAIG HOOD'S, APPLICATION FOR DIRECT APPELLATE REVIEW

The Defendant-Appellant, Craig Hood, hereby respectfully moves that that this Honorable Court grant him direct appellate review of his appeal now pending at the Massachusetts Appeals Court. As reasons therefor, the defendant states the following:

1) Hood, who has been serving two consecutive life sentences for two counts of second degree murder since 1995, was recently granted an evidentiary hearing on his third motion for new trial (Squires Lee, J., presiding).

2) Hood's case is inextricably intertwined with Commonwealth v. Elllis, 475 Mass. 459 (2016), which was decided by this Court. The same corrupt police detectives who investigated Ellis simultaneously investigated the Hood case, as the killings in both cases occurred 3 days apart, and both cases involved the same witnesses, some of the same evidence, and the same discovery.

3) Because Hood's case involves five Boston Police Detectives that former Suffolk County District Attorney Rachel Rollins has publically stated were involved in at least six years of corruption, there is public interest that justice requires a final determination by the full Supreme Judicial Court.

4) In addition to above, Hood raises claims of *Brady* violations, newly discovered evidence, and ineffective assistance of counsel. Hood's case also raises a novel issue regarding the due process rights of a defendant who is prevented from reviewing all evidence relevant to his case before tendering a plea.

Respectfully submitted,
Craig Hood
By his attorney,

Date: 7/24/25

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COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Appeals Court No. 2025-P-0736

Commonwealth	)
	)
v.	)
	)
Craig Hood	)

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT, CRAIG HOOD'S, APPLICATION FOR DIRECT APPELLATE REVIEW

Procedural History

On November 16, 1993, a Suffolk County Grand Jury indicted the defendant for murder in the first degree (001 and 002), unlawful possession of a firearm (003 and 004), and assault and battery by means of a dangerous weapon (005). The defendant was arraigned on November 19, 1993. On June 19, 1995, he pled guilty to all charges. As a result, he was sentenced as follows:

(001)	-	life
(002)	-	life from and after sentences imposed on 001, 003, 004, and 005
(003)	-	4-5 years concurrent
(004)	-	4-5 years concurrent
(005)	-	7-10 years concurrent

On April 2, 1996, the defendant filed a pro se motion to withdraw guilty pleas and for new trial and, on August 12, 1996, he was permitted to withdraw the motion without prejudice. On March 29, 2001, the defendant filed another pro se motion to withdraw guilty plea, which was denied on January 17, 2002

(Rouse, J., presiding). The Appeals Court subsequently affirmed the judgment. Commonwealth v. Hood, 56 Mass. App. Ct. 1107 (2002). In 2009, the defendant filed his second motion to withdraw guilty plea and for new trial, this time with the assistance of appellate counsel. He argued that defense counsel was ineffective for failing to pursue a viable motion to suppress where the defendant was questioned by police, despite being represented by counsel in another matter, and for failing to properly explain the sentencing structure to him at the time of his plea. The motion judge denied the motion in 2012 (Rouse, J., presiding) and the Appeals Court affirmed the judgment in 2015. Commonwealth v. Hood, 87 Mass. App. Ct. 1105 (2015).

On July 2, 2020, Hood filed his third motion for new trial arguing: 1) Hood's Fourth and Sixth Amendment rights to due process and be privy to all exculpatory evidence held by the prosecution were violated; 2) ineffective assistance of counsel; 3) newly discovered evidence; 4) *Brady* violations; and 5) the involvement of corrupt detectives in the investigation warranted a new trial. On July 15, 2023, November 3, 2023, May 24, 2024, and July 28, 2024 an evidentiary hearing was held before the Honorable Judge Squires Lee.[1] On June 10,

[1] The transcripts from the hearing are number chronologically and will be cited as (Tr. Vol. "). The Record Appendix to the Hood's motion for new trial was

2025, the defendant's motion for new trial was denied and on June 16, 2025, the defendant filed a timely notice of appeal. On June 17, 2025, the Appeals Court entered the case.

BRIEF STATEMENT OF FACTS RELEVANT TO THE APPEAL

Commonwealth v. Sean Ellis/Terry Patterson – the murder of Detective John Mulligan

On September 26, 1993, Detective John Mulligan was shot five times in the head inside his car in a Walgreens parking lot while on a paid security detail. Sean Ellis, Terry Patterson, and Celine Kirk were seen at Walgreens in Patterson's brown Volkswagen at the same time as the shooting.

On September 30, 1993, Ellis was questioned by police. He admitted to being at Walgreens on the date and time of the shooting. He claimed to have entered the store, purchased diapers for his cousin, Tracy Brown, and used the public telephone. He denied any involvement in the murder. Ellis's girlfriend, however, told police that after Mulligan's murder, Ellis had returned to the apartment he shared with Kirk, and retrieved Mulligan's service weapon and another firearm, both which were used to kill him. She then hid them in a nearby field. On October 7, 1993, the guns

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598 pages and there were 120 Exhibits introduced into evidence at the evidentiary hearing on the same.

were found by police. Patterson's fingerprints were recovered on the driver's side of Mulligan's truck.

On September 14, 1995, Ellis was convicted after a jury trial of first degree murder. He appealed his conviction and on December 6, 2000, the Supreme Judicial Court affirmed the judgment against him. Commonwealth v. Ellis, 432 Mass. 746, 765 (2000).

On May 13, 2013, Ellis filed a motion for a new trial arguing the existence of newly discovered evidence, as well as allegations that the Commonwealth had failed to disclose exculpatory evidence to him. The motion judge allowed Ellis's request for further discovery. After an evidentiary hearing that focused on three issues, i.e., the alleged inadequacies in the investigation, the involvement of corrupt detectives in the investigation, and the discovery that was subsequently provided to the defendant's appellate counsel pursuant to the defendant's motion, his motion for new trial was allowed.

The motion judge found, and this Court agreed, that Detectives Brazil, Acerra, and Robinson had a personal interest in solving Mulligan's murder as quickly as possible to cover their own corruption scheme and to conceal that Mulligan may have rubbed people the wrong way or may have been a 'dirty cop.' The detectives also failed to "vigorously pursue other leads." Id. at 470. The court found the newly discovered

evidence also would have supported a powerful Bowden defense with respect to the detectives' failure to investigate. After losing in the SJC, the Commonwealth decided not to retry Ellis for the murder of Det Mulligan.[2]

Commonwealth v. Craig Hood - the murders of Tracy Brown and Celine Kirk

On September 29, 1993, three days after Mulligan was murdered, Ellis's cousins, Tracy Brown and her sister, Celine Kirk were shot and killed. The only eyewitness was Brown's son, Ma'trez Brown, who was 2½ years old; he called 911.

In the days following the murders, the police interviewed several witnesses, including Nikki Coleman, a close girlfriend of Kirk. She informed police that on the afternoon of the murders, she had a telephone conversation with Kirk sometime between 2:00 p.m. and 4:00 p.m. During that call, she could hear Hood's voice in the background; he was a friend of Kirk. According to Coleman, she heard an argument between Kirk and the

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[2] Patterson was convicted of murder in the first degree, armed robbery, and possession of a dangerous weapon in a separate trial but his convictions were reversed on appeal due to a conflict of interest with respect to his trial attorney, and his case was remanded for a new trial. Commonwealth v. Patterson, 432 Mass 767 (2002). At the retrial, the defendant was convicted and again appealed, this time claiming that the opinion by the Commonwealth's fingerprint expert was not admissible. The SJC agreed and remanded the case back to the trial court. Patterson then pled guilty to the lesser included crime of manslaughter and was sentenced to time served. See Ellis, *supra* at 481 [fn 8].

defendant about a gold chain that the defendant had lent Kirk six weeks earlier. Kirk had previously offered to return the chain to Hood several times, but he did not take it back. During the argument, Kirk offered again to give the chain back to the defendant. At one point, they were disconnected and Kirk later told her that the defendant had ripped the phone out of the wall.[3] At the end of Coleman's conversation with Kirk, she heard the defendant say, "I'm leaving, I'll get [the chain] later."

Police learned the defendant had several warrants against him, one of which was for a prior shooting that occurred on June 15, 1993 near Norfolk Park. On that day, there was a confrontation between the victim, Glenn McLaughlin, and the defendant over accusations by the defendant that McLaughlin set him up to be robbed. When McLaughlin refused to leave the area pursuant to the defendant's request, the defendant shot him once through the leg with a .25 caliber handgun in the presence of several witnesses.

The bullet recovered from the McLaughlin shooting was compared with the three bullets that were removed from Kirk and Brown during their autopsies. It was determined that all four were fired from the same gun.

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[3] The Boston Police Department sent the telephone to the laboratory for latent fingerprint processing but the results remain unknown.

The defendant was arrested on the McLaughlin warrant and then confessed to the murders of Brown and Kirk. According to the defendant, he and Kirk were arguing about the chain, she refused to return it, and then tried to escort him to the door. In response, he shot her twice in the head. When Brown heard the noise, she fled into her bedroom, and the defendant followed, shooting her twice in the head. The defendant claimed he originally found the murder weapon the on the train tracks behind a fence at Norfolk Park and, after shooting Kirk and Brown, returned the weapon to the same place. Although police thoroughly searched that area, no weapon was ever found.

The defendant had a history of mental illness that was significant enough to warrant hospitalization in 1991, four years before he pled guilty. According to his medical records, he tested in the "mildly impaired range," experienced brief psychotic episodes, and bizarre and disorganized thinking, which was considered to be a preliminary phase to a more extended schizophrenia illness. Medical records depicted that he had witnessed his mother being drowned by his father at age six and, prior to her death, was told by her that he should not tell on other people. During his interrogation, he told police about the "voices" he had heard in his head for several years, confirming that

these same voices were speaking to him immediately after the shooting.

There were numerous statements made by Hood during his confession that did not match the evidence, suggesting that he had not really killed Kirk and Brown. At one point, he told police, "and that is when I *heard* that I shot her." Notably, police had done a 'run through' of Hood's confession before recording it, thus Hood's recorded statement was not spontaneous and instead, rehearsed.

The connection between the murders of Tracy Brown, Celine Kirk, and Detective John Mulligan

Celine Kirk and Tracy Brown were Ellis's cousins. Ellis was living at the residence of Kirk and Brown at the time they were killed. Kirk was present with Ellis and Patterson on September 26, 1993 when Mulligan was murdered in the Walgreens parking lot. Three days later, on September 29, 1993, Brown and Kirk were murdered in Brown's apartment. Because Kirk was a witness to the Mulligan murder, there was motive and opportunity for Ellis and Patterson to kill her.

Ma'Trez, who witnessed the Kirk/Brown shooting gave several interviews to a child psychologist at the District Attorney's Office. When asked who killed his mother, Ma'Trez said,"Sean" and "Terry" did it.

On September 30, 1993, when Ellis was interrogated by police, he was a suspect in all three murders. He claimed he initially learned of the double homicide on

his way home when he saw police, news media, and EMT's at the apartment. According to Ellis, he didn't speak with police on scene because he had outstanding warrants and didn't want to "bring attention to himself." Ellis subsequently became agitated and refused to cooperate any further with police.

During a discussion with an individual named Joseph Matthews, Ellis told him that Kirk's boyfriend - Kurt Headen [VK1]- had killed Kirk in an argument. According to Ellis, when Brown saw Kirk shot by Headen, she jumped in and stabbed Headen. Headen then killed Brown. Headen was the individual who helped Ellis's girlfriend dispose of the Mulligan murder weapons in the field.

On October 5, 1993, Andrew Tabb, a Boston Police Cadet, reported knowledge of a brown Volkswagen that belonged to a gang member known to him as "Terry Hood." He was privy to a conversation with two gang members and, when asked if "Terry" was responsible for Mulligan's death, they said that "Terry" may not have done the shooting but may know where the gun was located. These gang members said that "Terry's" plan was to flee Massachusetts but he didn't have enough money to do it. They speculated that the double murder on Oakcrest Road was related to the Mulligan case and that Terry may have wanted the chain to exchange it for money to flee the state[VK2][JO3]. Tabb subsequently

viewed a photo array and identified the person he knew to be "Terry Hood" as Terry Patterson.

Nikki Coleman confirmed Kirk was with Ellis on the night of Mulligan was killed Kirk discussed it with her thereafter. Kirk told her that Mulligan had been shot between the eyes three times, but never told Coleman who did it. Three days later, after Kirk was shot, Coleman wondered why Kirk was killed and, after "started getting some of the facts," believed the death had to do with the Mulligan shooting.

Two days before her death, Kirk told a male friend, Prentiss Douglas, that she was at the scene of Mulligan's murder. That day, she was "very nervous, distant, and not herself." The next day, she told Douglas that she saw one of the men she was with that night at Douglas's repair shop when his Volkswagen was being repaired.[4] On the very same day she died, at approximately 4:00p.m. - 4:30 p.m., she told Douglas that she didn't "want to go to" back to her apartment. Approximately a half hour later, when she had arrived there, she called him and told him that her cousin, Sean Ellis, was coming to pick her up. That was the last time he ever spoke to her.

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[4] Patterson had removed the tint, "bra," and plates on his Volkswagen after Mulligan was shot.

Ellis's own uncle, David Murray, told police on October 2, 1993 that he felt that Ellis was present at the scene when Kirk and Brown were killed and had dialed the operator fo the boy. Ellis had told Murray that the girls had been murdered over a gold chain and about Kirk "keeping her mouth shut," about Mulligan's murder. Although Kirk had allegedly been killed because she refused to give Hood back his chain, it was not in her possession when she was killed but instead was in Ellis's possesion.

On Septmeber 30, 1993, after Kirk and Brown were killed, Ellis returned to their apartment, which was taped off as a crime scene, and retrieved the two firearms used to kill Mulligan. Both weapons had been hidden in the girls' apartment at the time of their death.

It was reported by one officer that Mulligan had taken drugs from Brown or Kirk, telling her that if her boyfriend wanted the drugs back, he would have to come and see Mulligan or she would be arrested. Mulligan was also known to carry a .25 caliber gun on his ankle, the same caliber that was used to kill Brown and Kirk but was never found.

The exact same task force that investigated the Mulligan shooting was assigned to investigate the Kirk/Brown shooting. When police executed the warrant at Kirk/Brown's apartment, they sought evidence of all

three killings. During the search, they found two live .25 caliber bullets, the same caliber used to kill Brown and Kirk, in the same place as Ellis's Massachusetts identification card.

ARGUMENTS

I. For all the same reasons Ellis was granted a new trial, Hood is entitled to a new trial.

The issues raised in Ellis apply squarely to Hood's case. Judge Ball found, and the SJC affirmed, that there was a long history of corruption and misconduct by Det. John Mulligan and by the detectives who investigated his death. This information would have made a difference to Hood because each one of those detectives also played a crucial part in his case.[5] Had Hood known about this corruption and misconduct, he would never have pled guilty.

Prosecutors had a similar duty to disclose the same evidence that Judge Ball found in Ellis was not disclosed because, not only were the cases so closely intertwined as to warrant it, but also because Hood's attorney repeatedly requested all of it. Undoubtedly, the misconduct and private interests of the detectives who investigated all three homicides simultaneously compromised the impartiality of all three prosecutions and completely tainted Hood's case.

II. The protective order issued by Judge Hamlin was unnecessary, far too restrictive, and deprived Hood of his constitutional right to due process and to be informed of all exculpatory evidence held by the prosecution.

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[5] While all were involved in Hood's case, Mulligan, Keeler, and Brazil played the most integral parts. Indeed, Keeler and Brazil were responsible for the most damning evidence against Hood - his confession.

The Commonwealth's evidence in the Ellis/Patterson case was evidence that was material and exculpatory to Hood. Because Kirk was present in the Walgreens parking lot when Mulligan was shot, was with the two murder suspects when it happened, resided with one of them, and lived in the apartment where Mulligan's service pistol and the murder weapon were hidden, anything and everything in the Commonwealth's Ellis/Patterson files had potential exculpatory value to Hood because whoever killed Mulligan would have a very strong motive to kill Kirk.[6]

Hood's attorney, Steven Weymouth, requested the Ellis/Patterson discovery a total of seven times in the 18 ½ months Hood remained in custody, and was finally granted it on April 20, 1995 over the objection of Ellis's attorneys.[7] When he got it, a protective order issued that prohibited Weymouth from conducting any investigation into the information provided, from interviewing any witnesses, and from discussing it with

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[6] Evidence that Ellis was a potential third-party culprit was also consistent with what Hood told his trial attorney in confidence, i.e., that Ellis had asked him to confess to the crime Ellis and Patterson committed, and assured Hood that he could never be convicted of it because he didn't do it (Tr.I-52)

[7] Weymounth had to wait until Ellis was tried before the Commonwealth would turn over this discovery because Ellis's attorney was apparently afraid that Weymouth would say something disparaging about Ellis to the press. Ellis had two mistrials and was convicted after his third trial.

Hood. The order was entirely unnecessary, far too restrictive, and effectively deprived Hood of his constitutional right to be informed of all exculpatory evidence held by the prosecution.

The impact of this frivolous and unconstitutional protective order cannot be overstated. It is undisputed that Hood was never privy to approximately 2,000 pages of discovery, which included 200 police reports relating Mulligan's death, all cadet reports re: evidence searches, approximately 35 transcribed witness interviews, approximately 600 pages of grand jury testimony, 130 pages of police 'hotline' tips; all crime lab, fingerprint and ballistics reports, and miscellaneous documents. This protective order effectively deprived Hood of the opportunity to explore *all* potential defenses available to him.[8]

Hood did not waive his right to be privy this discovery. This case stands in marked contrast to a situation where a defendant waives his right to review all evidence held by the Commonwealth, and opts instead

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[8] Hood argues here that his Fourth and Sixth Amendment rights to due process and to be privy to all evidence held by the prosecution was violated by the court, rather than by the prosecutor via a *Brady* violation. As such, a showing under *Brady*, i.e., that the 2,000+ pages were material, exculpatory, and that Hood was prejudiced because he was prohibited from reviewing them, is unnecessary. Hood's constitutional rights were violated by the mere fact that the court did not allow him the opportunity to review all evidence (material or not) held by the prosecution.

to plead guilty at his arraignment. In that case, the evidence would be available to a defendant, but he simply chose not to look at it. Here, Judge Hamlin explicitly barred Hood from reviewing this crucial evidence held by the Commonwealth. The protective order extended far past the time in which Hood pled guilty.

Hood only appeared in court a handful of times thus had no conception about the contentious conflict that was occurring in his absence between the Commonwealth, Weymouth, and Ellis's attorneys. Notably, Hood was not present in court when the discovery agreement was initially entered into by Weymouth and read in open court, and was not present on at least three additional occasions when Weymouth was arguing about or addressing the production of the Ellis/Patterson discovery.[9]

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[9]The Criminal Docket reflects only five court appearances by Hood. Hood was present on November 19, 1993 for his arraignment, on December 29, 1993 when Weymouth filed for funds and for BOP records, on February 14, 1995 for a motion for funds and when O'Brien requested access to Hood's mental health records, on April 20, 1995 when the court finally ordered the production of the Ellis discovery under a protective order, and on June 19, 1995 when he pled guilty.

He was NOT present in court on January 14, 1994 for the Pre-Trial Conference, on February 25, 1994 when Weymouth filed of a motion to enlarge the time to file evidentiary motions, on May 4, 1994 when the "discovery agreement [was] read into [the] record" after Weymouth's April 28, 1994 filing of his "Motion for Discovery Provided in Commonwealth v. Sean Ellis and Tony [sic] Patterson," on July 2, 1994 when Weymouth filed his "Memorandum in Support of Defendant's Motion to Compel Production of Discovery Material in the Matters of Commonwealth vs. Ellis and Commonwealth vs.

II. Hood was deprived of effective assistance of counsel when Weymouth agreed to wait for the Ellis/Patterson discovery until Ellis was tried; failed to object to the protective order that was issued; failed to conduct a thorough review of all of the Ellis/Patterson discovery he was provided before advising Hood to plead guilty; and failed to ask the court to vacate the protective order prior to Hood's plea.

Weymouth ultimately agreed to receive the Ellis/Patterson discovery under the terms mandated by the Commonwealth and Ellis's attorney to his own client's detriment. The 18 ½ month delay also hindered Hood's defense, as the more time that passed without the opportunity to review this evidence and investigate leads that could have supported a viable defense, the greater the disadvantage to Hood (Tr.III-20).[10]

Weymouth should have objected to the protective order when the discovery was finally produced. His failure to object eventually led to a plea made by Hood

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Patterson," on October 14, 1994 for a lobby conference, on December 7, 1994 during a hearing on the Ellis/Patterson dockets attended by Ellis, Patterson, Broker, Zalkind, Attorney Hurley (who represented Patterson), O'Brien, and Weymouth, where an agreement was made for the Commonwealth to produce the Ellis/Patterson discovery to Weymouth after Broker's closing arguments in Ellis, on March 30, 1995 when the court initially ordered the disclosure of the Ellis/Patterson discovery to Weymouth at the conclusion of the Ellis trial subject to a protective order, and on May 23, 1995 for Weymouth's second motion for BOP records. *See* Criminal Docket of Commonwealth v. Hood.

[10] Two very important witnesses in the Mulligan case, Kevin Chisholm and Kurt Headon, were murdered on July 27, 1994 and October 7, 1994 respectively, while Hood was still waiting for the Ellis/Patterson discovery.

that was not knowing or intelligently made. It was Hood's, not Weymouth's, constitutional right to be informed of all evidence held by the Commonwealth. Providing Weymouth with the Ellis/Patterson discovery at the eleventh hour did not absolve the Commonwealth, or the court, from its obligations under the Constitution.

Perhaps the biggest error made by Weymouth was his failure to ask the court to revisit the protective order prior to Hood's plea.[11] When a plea deal was discussed, Weymouth "stopped paying attention" to any issues regarding Mulligan's alleged misconduct after it was presented to him (Tr.IV-47).[12] He also admitted that he "probably did not continue [his] review of the

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[11] Weymouth conceded that he "probably…made a mistake" in not revisiting the protective order prior to Hood's plea to enable him to review the third party culprit evidence with Hood, and that he "should have waited" before advising Hood to plea (Tr.IV-134-137). *See* Mass.R.Crim.P 14(a)(7)(provides for the modification of an existing discovery protective order).

[12] Weymouth was admittedly "naive," as he "really didn't know very much about Mulligan at the time." (Tr.I-42). In Ellis, Attorney Duncan testified "that while he knew investigators involved in the homicide investigation were corrupt, all he had to support that assertion before Ellis's trial and at the time of Elli's first motion for new trial were newspaper articles." Attorney Zalkind testified similarly, "that he knew Detectives Acerra, Robinson, and Mulligan were 'bad cops,' but they did not have anything they could present as evidence aside from newspaper articles." Ball noted in Ellis that Broker had a "lack of concern for the rumors surrounding the corrupt detectives because they did not "affect her," and that this lack of concern did not comport with Mass.R.Crim.P. 14(a)(3). Broker's lack of concern had the same impact in Hood's case.

discovery that [he] had been given prior to Hood's plea." (Tr.IV-138).

Nothing prevented Weymouth from informing the court that the parties were in plea discussions and, as a result, the protective order needed to be vacated so he could appropriately discuss all of the Ellis/Patterson discovery with Hood before Hood made the most important decision of his life. He also could have told former ADA Leslie O'Brien that he had not yet completed his review of the Ellis/Patterson discovery, and wanted additional time to do the same before advising Hood. Weymouth did neither. He was in no position to advise Hood about the possibility of a plea, or to discuss the strengths and weakness of his case because, having failed to review all the discovery eventually received, Weymouth was completely uninformed during those discussions. This a textbook example of ineffective assistance of counsel.

When asked if there was anything in the Ellis/Patterson materials that he should have shared with Hood, Weymouth conceded that he "might have made a mistake. [He] might have - might have been materials that [he] should have shared with him that [he] probably did not." (Tr.IV-113). When asked the reason why he didn't share those materials with Hood, he candidly admitted, "I don't have one." (Tr.IV-113). When questioned about his advice to Hood about taking the

plea deal, Weymouth admitted that it was "probably a mistake" that he advised Hood to take the plea deal because he "thought there were more materials out there that [he] just didn't get a chance to look at before that." (Tr.IV-115-116). But for counsel's errors, Hood would not have pled guilty and would have insisted on going to trial.

III. The Commonwealth's violation of *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

The prosecutor's files in Hood, Ellis, and Patterson were completely unorganized, as was the manner in which discovery was produced to Hood's attorney. At the evidentiary hearing, former ADA Leslie O'Brien testified about the way the Boston Police Department would provide discovery to her and Phyllis Broker, who prosecuted Ellis, how the reports would be identified, and how they would be provided to counsel. O'Brien relied on Broker's good record keeping and file organization to enable her to pull out all relevant documents and provide them to Weymouth when Broker granted her access (Tr.II-121).[13]

The police reports were not labeled in a uniformed fashion by case name and case number. Some of the labels referenced "John Mulligan," "John J. Mulligan," or

[13] Notably, in Ellis, Judge Ball found Broker's record keeping and discovery production process to be problematic.

"Mulligan, John," while others referenced "Celine Kirk and Tracy Brown," or "Craig Hood." Other reports were labeled using the names of all three homicide victims. There were police reports mislabeled, "John Mulligan," which contained information only about the Kirk/Brown case, and not every police report labeled "John Mulligan" contained information only about the Mulligan murder - some contained information about all three homicides.[14]

O'Brien admits that she did not read the body of each police report, and she acknowledges that she was not reviewing the Mulligan materials as they were coming in (Tr.I-205; II-118). The case numbers assigned by the Boston Police to each police report did nothing to clarify to which case it belonged, as there were reports from all three homicides with the same case number (Tr.II-126). There was evidence produced to counsel late, not in accordance with discovery letters authored by O'Brien, and in some cases, not at all. The

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[14] For example, a police report regarding the search of Hood's apartment for evidence of Kirk/Brown's murder was mislabeled, "John Mulligan" (Tr.II-130). A report from Dets. Mahoney and Brazil dated October 1, 1993 entitled, "Re: Information from David Murray which led to the arrest of Craig Hood" was mislabeled "Mulligan, John." There were several reports that contained information about all three homicides mislabeled "John J. Mulligan" or "John Mulligan" including an interview of Prentiss Douglas on October 15, 1993, an interview of Joseph Matthews, an interview of Sean Ellis, and an interview of Cadet Andrew Tabb.

production of the evidence in Hood's case had problems similar to those found by Judge Ball in Ellis in that there were "ambiguities in the evidence with regard to a discovery production process which seems haphazard."[15]

By O'Brien's own admissions, not everything was ultimately produced to Hood despite the order obligating her to produce it (Tr.III-30, 68,109-110,). Among these documents were FBI reports dated February 7, 1994 and February 9, 1994 that confirm that Ellis told a cooperating witness that Mulligan had been receiving money from Ellis's cocaine distribution operation, and there had been a disagreement with Mulligan about Mulligan's cut. As a result, Ellis and another person plotted to kill Mulligan, executed the plot, and then attempted to make it look like a street robbery. This was extremely exculpatory to Hood since his defense was that Ellis had killed Mulligan, and then killed Kirk because she was a witness to Mulligan's death.

WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

Direct appellate review is appropriate because Hood's case concerns many of the same issues involved

[15] Judge Ball found "that discovery was turned over to Ellis piecemeal, and in an order that does not correspond to the chronology of the Police Report Index." The discovery in Hood was also produced in piecemeal, and not properly indexed according to which homicide it referenced.

in Ellis, *supra* previously decided by this Court. It also involves a question of public interest that justice requires a final determination by the full Supreme Judicial Court because many of the corrupt Boston homicide detectives conducted the investigation in Hood's case. Finally, Hood's case involves a novel issue that has apparently never been addressed by this Court or the Appeals Court, i.e., the constitutionality of a protective order that barred a defendant from being privy to thousands of pages of discovery before pleading guilty to a double homicide.

CONCLUSION

For all the above reasons of law and fact, the defendant, Craig Hood, respectfully asks this Court to allow his Application for Direct Appellate Review.

Respectfully submitted,
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By his attorney,

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CERTIFICATE OF SERVICE

I, Jennifer H. O'Brien, counsel for the defendant herein, hereby certify that on the 21st day of July, 2025 I served a copy of the application for direct appellate review and the memorandum in support thereof by electronic mail to:

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COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Appeals Court No. 2025-P-0736

Commonwealth

v.

Craig Hood

RECORD APPENDIX
VOLUME 1 OF 4

R1

9384CR11566 Commonwealth vs. Hood, Craig G

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 11/16/1993
- DCM Track:
- I - Inventory
- Initiating Action:
- MURDER c265 §1
- Status Date:
- 11/16/1993
- Case Judge:
-
- Next Event:
-

All Information | Party | Charge | Event | Docket | Disposition

Party Information

Commonwealth
- Prosecutor

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R2

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Bennani, Esq., Omar
- Other interested party

Alias	Party Attorney

More Party Information

Party Charge Information

- **Hood, Craig G**
- - Defendant
  Charge # 1:
  265/1-0 - Felony MURDER c265 §1

- Original Charge
  - 265/1-0 MURDER c265 §1 (Felony)
  - Indicted Charge
  -
  - Amended Charge
  -

Charge Disposition	
Disposition Date	Disposition
06/19/1995	Guilty Plea - Lesser Included

- **Hood, Craig G**
- - Defendant
  Charge # 2:
  265/1-0 - Felony MURDER c265 §1

- Original Charge
  - 265/1-0 MURDER c265 §1 (Felony)
  - Indicted Charge
  -
  - Amended Charge
  -

Charge Disposition	
Disposition Date	Disposition
06/19/1995	Guilty Plea

- **Hood, Craig G**
- - Defendant
  Charge # 3:
  269/10/J-0 - Felony FIREARM, CARRY WITHOUT LICENSE c269 §10(a)

- Original Charge
  - 269/10/J-0 FIREARM, CARRY WITHOUT LICENSE c269 §10(a) (Felony)
  - Indicted Charge
  -
  - Amended Charge
  -

Charge Disposition	
Disposition Date	Disposition
06/19/1995	

Guilty Plea R3

- **Hood, Craig G**
- - Defendant
  Charge # 4:
  269/10/J-0 - Felony FIREARM, CARRY WITHOUT LICENSE c269 §10(a)

- Original Charge
  - 269/10/J-0 FIREARM, CARRY WITHOUT LICENSE c269 §10(a) (Felony)
  - Indicted Charge
  -
  - Amended Charge
  -

Charge Disposition
Disposition Date
Disposition
06/19/1995
Guilty Plea

- **Hood, Craig G**
- - Defendant
  Charge # 5:
  265/15A/B-0 - Felony A&B WITH DANGEROUS WEAPON +65 c265 §15A(a)

- Original Charge
  - 265/15A/B-0 A&B WITH DANGEROUS WEAPON +65 c265 §15A(a) (Felony)
  - Indicted Charge
  -
  - Amended Charge
  -

Charge Disposition
Disposition Date
Disposition
06/19/1995
Guilty Plea

Events

Date	Session	Location	Type	Event Judge	Result
12/07/1993 09:30 AM	Criminal 1		Pre-Trial Conference		
12/29/1993 09:30 AM	Criminal 1		Pre-Trial Conference		
01/14/1994 09:30 AM	Criminal 1		Pre-Trial Conference		Held as Scheduled
04/07/1994 09:30 AM	Criminal 1		Hearing		Rescheduled
04/28/1994 09:30 AM	Criminal 1		Hearing		Rescheduled
05/04/1994 09:30 AM	Criminal 1		Hearing		Held as Scheduled
06/15/1994 09:30 AM	Criminal 1		Hearing		Rescheduled
07/12/1994 09:30 AM	Criminal 1		Hearing		Held as Scheduled
07/26/1994 09:30 AM	Criminal 1		Hearing		Rescheduled
09/12/1994 09:30 AM	Criminal 1		Hearing		Rescheduled
10/07/1994 09:30 AM	Criminal 1		Status Review		Held as Scheduled
11/01/1994 09:30 AM	Criminal 3		Status Review		Held as Scheduled
01/04/1995 09:30 AM	Criminal 3		Status Review		Held as Scheduled
01/30/1995 09:00 AM	Criminal 2		Jury Trial		Rescheduled
01/30/1995 09:00 AM	Criminal 7		Jury Trial		Rescheduled

R4

Date	Session	Location	Type	Event Judge	Result
01/30/1995 09:30 AM	Criminal 3		Trial Assignment Conference		Rescheduled
02/15/1995 09:00 AM	Criminal 7		Hearing		Rescheduled
02/28/1995 09:00 AM	Criminal 7		Hearing		Rescheduled
03/16/1995 09:00 AM	Criminal 7		Hearing		Rescheduled
03/30/1995 09:00 AM	Criminal 7		Trial Assignment Conference		Rescheduled
04/07/1995 09:00 AM	Criminal 7		Hearing		Held as Scheduled
04/27/1995 09:00 AM	Criminal 7		Hearing		Rescheduled
06/14/1995 09:00 AM			Hearing		Held as Scheduled
08/10/2011 02:00 PM	Criminal 1		Hearing		Not Held
08/10/2011 02:00 PM	Criminal 5		Status Review		Held as Scheduled
02/19/2021 11:00 AM	Criminal 3		Conference to Review Status	Squires-Lee, Hon. Debra A	Held as Scheduled
04/01/2021 09:30 AM	Criminal 3	BOS-8th FL, CR 808 (SC)	Conference to Review Status	Squires-Lee, Hon. Debra A	Held as Scheduled
08/04/2021 09:00 AM	Criminal 3	BOS-8th FL, CR 808 (SC)	Evidentiary Hearing on Suppression	Squires-Lee, Hon. Debra A	Rescheduled
08/12/2021 03:00 PM	Criminal 3	BOS-8th FL, CR 808 (SC)	Conference to Review Status	Squires-Lee, Hon. Debra A	Held as Scheduled
12/22/2021 09:00 AM	Criminal 9	BOS-7th FL, CR 713 (SC)	Evidentiary Hearing on Suppression	Squires-Lee, Hon. Debra A	Rescheduled
01/28/2022 09:00 AM	Criminal 5	BOS-8th FL, CR 817 (SC)	Evidentiary Hearing on Suppression	Wall, Hon. Joshua	Canceled
01/28/2022 09:00 AM	Criminal 3	BOS-8th FL, CR 808 (SC)	Conference to Review Status	Squires-Lee, Hon. Debra A	Rescheduled
01/28/2022 09:00 AM	Criminal 9		Conference to Review Status	Campbell, Hon. Cathleen E.	Held as Scheduled
04/29/2022 03:00 PM	Criminal 9		Conference to Review Status	Ham, Hon. Catherine	Held as Scheduled
06/03/2022 03:00 PM	Criminal 9	BOS-7th FL, CR 713 (SC)	Conference to Review Status	Squires-Lee, Hon. Debra A	Held as Scheduled
07/29/2022 02:00 PM	Criminal 6		Hearing on Compliance	Ullmann, Hon. Robert L	Held as Scheduled
07/29/2022 02:00 PM	Criminal 9		Hearing on Compliance	Budreau, Hon. James	Rescheduled
05/15/2023 02:00 PM	Criminal 2		Conference to Review Status	Squires-Lee, Hon. Debra A	Held as Scheduled
09/15/2023 09:00 AM	Criminal 9		Hearing on Motion for New Trial	Cloutier, Hon. Claudine	Held as Scheduled
11/02/2023 09:00 AM	Criminal 6		Hearing on Motion for New Trial	Ullmann, Hon. Robert L	Canceled
11/03/2023 09:00 AM	Criminal 6		Hearing on Motion for New Trial	Ullmann, Hon. Robert L	Held as Scheduled
03/29/2024 09:00 AM	Criminal 9	BOS-7th FL, CR 713 (SC)	Hearing on Motion for New Trial	Rooney, Hon. Lynn C	Canceled
05/24/2024 09:00 AM	Criminal 5	BOS-8th FL, CR 817 (SC)	Hearing on Motion for New Trial	Squires-Lee, Hon. Debra A	Held as Scheduled
06/28/2024 09:00 AM	Criminal 5	BOS-8th FL, CR 817 (SC)	Hearing on Motion for New Trial	Squires-Lee, Hon. Debra A	Held as Scheduled

Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
10/05/1993	Case opened to issue docket# to grand jury		
11/16/1993	Indictment returned	1	Image
11/16/1993	Motion by Commonwealth for arrest warrant to issue; filed & allowed Sweeney, J.	2	
11/17/1993	Warrant on indictment issued (Hold Leslie O'Brien, ADA Ext:8701)		
11/17/1993	Notice & copy of indictment sent to Chief Justice & Atty Gen.		
11/17/1993	Notice & copy of indictment & entry on docket sent to Sheriff.		
11/19/1993	Brought into Court.		
11/19/1993	Deft arraigned before Court - Indictmentreads as to offenses 001 and 002.		
11/19/1993	Deft waives reading of indictment as to offennses 003, 004, amd 005.		
11/19/1993	Order of notice of finding of murder indictment returned with service.		
11/19/1993	RE offense 1: Plea of not guilty		
11/19/1993	RE offense 2: Plea of not guilty		
11/19/1993	RE offense 3: Plea of not guilty		
11/19/1993	RE offense 4: Plea of not guilty		
11/19/1993	RE offense 5: Plea of not guilty		
11/19/1993	Report of Dr. Wesley E. Profit, filed.	3	
11/19/1993	Mittimus without bail issued to Common Jail. Wilson, AC/M - L. O'Brien, ADA - ERD, - T. Kerner, Attorney.		
12/29/1993	Brought into Court.		
12/29/1993	Deft files: Motion for criminal records.	4	Image
12/29/1993	Motion (P#4) allowed.		
12/29/1993	Deft files: Motion for funds.	5	Image
12/29/1993	Motion (P#5) allowed as endorsed. Wilson, AC/M - R. Powers, ADA - E.R.D. - S. Weymouth, Attorney		
01/14/1994	Defendant not in Court. Motions to be filed by 2/18/94.		
01/14/1994	Pre-trial conference report, filed. Wilson, AC/M - L. O'Brien, ADA - ERD - T. Kerner, Attorney.	6	Image
02/25/1994	Defendant not in Court - All motions to be filed by March 10, l994.		
02/25/1994	Deft files motion to enlarge time to file and continue.	7	Image
02/25/1994	Motion (P#7) allowed. Hannaway, AC/M - A. Tiernan, ADA - E.R.D. - T. Kerner, Attorney.		
04/07/1994	Not in Court. Continued to 4/21/94 to file all motions at request of defendant. Wilson, AC/M - R. Powers, ADA - E.R.D. - S. Weymouth, Attorney.		
04/28/1994	Deft files motion to sever.	8	Image
04/28/1994	Deft files motion for discovery provided in Commonwealth Vs. Sean Ellis and Tony Patterson.	9	Image
04/28/1994	Deft files motion for exculpatory evidence.	10	Image
04/28/1994	Deft files motion for inspection of radio communications.	11	Image
04/28/1994	Deft files motion for production of defendant' statements.	12	Image
04/28/1994	Deft files motion for criminal records of Commonwealth witness(es).	13	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/28/1994	Deft files motion for production of copies of physical evidence and photographs.	14	Image
04/28/1994	Deft files motion for production of scientific reports.	15	Image
04/28/1994	Deft files motion for production of police reports.	16	Image
04/28/1994	Deft files motion for production of parcipient witness(es).	17	Image
04/28/1994	Deft files motion for discovery of expert evidence.	18	Image
04/28/1994	Deft files motion for list of Commonwealth's witness(es)	19	Image
04/28/1994	Deft files motion for production of statments of witness(es).	20	Image
05/04/1994	Defendant not in Court - discovery agreement read into record. Wilson, AC/M - L. O'Brien, ADA - ERD, - S. Weymouth, Attorney.		Image
07/12/1994	Defendant not in Court.		
07/12/1994	Deft files memorandum in support of defendant's motion to compel production of discovery material in the matters of Commonwealth vs. Patterson and Commonwealth vs. Ellis. Wilson, AC/M - L. O'Brien, ADA - ERD, - S. Weymouth, Attorney.	21	Image
07/27/1994	Appointment of Counsel Weymouth as to offenses 003, 004, 005. Walsh, Ac/M - R. Miller, ADA - ERD, - S. Weymouth, Attorney.		
10/14/1994	Lobby conference, no defendant. Court orders Rule 36 tolled until 11/01/94 Banks, J. - L. O'Brien, ADA - E. Mercurio, Court Reporter - S. Weymouth, Attorney		
11/01/1994	Lobby conference, no court reporter. Court orders Rule 36 tolled until 01/30/95. Banks, J. - L. O'Brien, ADA - S. Weymouth, Attorney		
11/23/1994	Deft files Motion for Funds for Ballistician	22	
11/23/1994	Motion P#22 allowed as endorsed. Banks, J.		Image
12/29/1994	Case transferred to the (II) Second Criminal Session, January 1995 for scheduling purposes before Justice James McDaniel (R.A.J.). Banks, J.		
01/19/1995	Commonwealth files motion for handwriting exemplar.	23	
01/19/1995	Commonwealth files affidavit in support.	24	Image
01/19/1995	Commonwealth files motion to compel defendant to undergo psychiatric examination.	25	Image
01/19/1995	Commonwealth files memorandum in support.	26	Image
01/24/1995	Deft files motion to suppress statements and affidavit.	27	Image
02/14/1995	Brought into Court		Image
02/14/1995	Motion (P#25) allowed. Hearing on motion #23 continued to 2/27/95.		
02/14/1995	Deft files motion for funds and no action taken at this time.	28	
02/14/1995	Commonwealth files motion and memorandum in support of Commonwealth's motion to obtain access to defendant's records.	29	Image
02/14/1995	Order of Hamlin, J. filed.	30	Image
02/14/1995	Order of Hamlin, J. filed.	31	Image
02/14/1995	Order of Hamlin, J. filed.	32	Image
02/14/1995	Order of Hamlin, J. filed. Hamlin, J. - L. O'Brien, ADA - S. Weymouth Attorney - D. Cullinan, Court Reporter	33	Image
02/21/1995	Affidavit in support of motions for funds filed.	34	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/27/1995	Hospital records from The Arbour Hospital re: deft. received per order of Hamlin, J.		
02/28/1995	Hospital records from Bridgewater State Hospital re: deft. received on Feb. 24, 1995, per order of Hamlin, J.		
03/01/1995	Hospital records from The Arbour Hospital re: deft. returned to L. O'Brien, ADA.		
03/01/1995	Hospital records from Bridgewater State Hospital re: deft returned to L. O'Brien, ADA.		
03/07/1995	Hospital records from Massachusetts General Hospital re: defendant, received.		
03/07/1995	Hospital records from Massachusetts General Hospital returned to District Attorney.		
03/29/1995	Report of Doctor Martin Kelly filed.	35	
03/30/1995	Defendant not in Court - After hearing, Court orders discovery material be turned over to defendant at conclusion of the Ellis case. Hamlin, J. - L. O'Brien, ADA - S. Weymouth, Attorney - D. Cullinan, Court Reporter		
04/20/1995	Brought into Court - After hearing, Court orders discovery to be given to Attorney Stephen Weymouth and Thomas Kerner only and not to be disclosed to anyone else.		
04/20/1995	Deft files motion for additional funds for forensic psychologists.	36	Image
04/20/1995	Motion (P#36) allowed in the amount of $2000.00		
04/20/1995	Deft files motion for additional funds for investigator.	37	Image
04/20/1995	Motion (P#37) allowed in the amount of $750.00.		
04/20/1995	Deft files motion for additional funds for transcript in the case of Commonwealth vs. Ellis II and no action taken at this time. Hamlin, J. L. O'Brien, ADA - S. Weymouth, Attorney - D. Cullinan, Court Reporter	38	Image
04/28/1995	Motion (P#38) denied without prejudice. (parties notified via telephone) Hamlin, J.		
04/28/1995	Case transferred to the VIII Criminal Session for trial in May of 1995 before Justice Rouse in Room 306. Walsh, AC/M.		
05/08/1995	Commonwealth files motion and memorandum in support of Commonwealth's motion to obytain access to results of psychological testing of defendant.	39	
05/08/1995	Commonwealth files affidavit in opposition to defendant's motion to sever.	40	Image
05/08/1995	Commonwealth files memorandum in opposition to defendant's motion to sever.	41	Image
05/08/1995	Commonwealth files motion in limine regarding expert testimony with attachment.	42	Image
05/08/1995	Commonwealth files motion in limine relating to other crime evidence; memorandum in support.	43	Image
05/15/1995	Deft files motion to suppress defendant's correspondance dated 3/5/94; affidavit of Craig Hood.	44	Image
05/15/1995	Deft files motion for criminal records.	45	Image
05/15/1995	Order, filed. After conference, case returned to the First Session for re-assignment - unable to reach case until August session. Rouse, J. - L. O'Brien, ADA - S. Weymouth, Attorney.	46	Image
05/23/1995	Defendant not in Court.		
05/23/1995	Motion (P#45) allowed.		
05/23/1995	Motion (P#39) allowed. McDaniel, J - L. O'Brien, ADA - N. King, Court Reporter - S. Weymouth, Attorney.		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
06/14/1995	Deft files motion in opposition to Commonwealth's motion in limine relating to other crime evidence; memorandum in support.	47	Image
06/14/1995	Deft files memorandum in support of motion to suppress defendant's correspondance dated 5/5/94.	48	Image
06/14/1995	Deft files motion for additional funds for psychological experts with affidavit.	49	Image
06/14/1995	Deft files motion for additional funds for a ballistician with affidavit.	50	Image
06/14/1995	Deft files motion for individualized voir dire of jurors with proposed questions for voir dire.	51	Image
06/14/1995	Deft files motion in limine to admit hearsay statements of Ma'Trez Brown with memorandum.	52	Image
06/14/1995	Deft files affidavit in support of motion to sever.	53	Image
06/14/1995	Commonwealth files memorandum in opposition to defendant's motion to suppress.	54	Image
06/14/1995	Commonwealth files supplemental memorandum to Commonwealth's motion in limine regarding expert testimony.	55	Image
06/14/1995	Commonwealth files memorandum in opposition to motion to suppress defendant's correspondence.	56	Image
06/15/1995	Deft files memorandum in support of motion to sever.	57	
06/15/1995	Deft files memorandum in opposition to Commonwealth's motion in limine regarding expert testimony.	58	Image
06/19/1995	Brought into Court. Commonwealth's oral motion to amend indictments to read 6/15/93 allowed.		
06/19/1995	RE offense 1: Guilty plea to lessr offns as charges Murder 2nd degree.		
06/19/1995	RE offense 2: Guilty plea		
06/19/1995	RE offense 3: Guilty plea		
06/19/1995	RE offense 4: Guilty plea		
06/19/1995	RE offense 5: Guilty plea		
06/19/1995	Sentence imposed: as to offense #001 - MCI Cedar Junction - LIFE. Mittimus issued.		
06/19/1995	Sentence imposed: as to offense #005 - MCI Cedar Junction - Max. ten years - Min. seven years concurrent with offense #001. Mittimus issued.		
06/19/1995	Sentence imposed: as to offense #003 - M.C.I. Cedar Junction - Max. five years - Min. four years concurrent with offense #001. Mittimus issued.		
06/19/1995	Sentence imposed: as to offense #004 - M.C.I. Cedar Junction - Max. five years - Min. four years concurrent with offense #001. Mittimus issued.		
06/19/1995	Sentence imposed: as to offense #002 - M.C.I. Cedar Junction - LIFE From and After offenses #001, 003, 004, 005. Mittimus issued.		
06/19/1995	Sentence credit given as per 279:33A: as to offenses #001, 003, 004, and #005 - 625 days.		
06/19/1995	Sentence credit given as per 279:33A: as to offense #002 - zero days.		
06/19/1995	Victim-witness fee assessed: $50.00.		
06/19/1995	Notified of right of appeal under Rule 64. Rouse, J. - L. O'Brien, ADA - P. Pietrello, Court Reporter - S. Weymouth, Attorney.		
08/31/1995	Victim-witness fee paid as assessed $50.00		
04/02/1996	Deft files Pro Se: Notice for hearing on withdrawal of Guilty Plea and new trial.	59	Image
04/02/1996	Deft files Pro Se: Motion to withdraw Guilty Plea and for a new trial and affidavit and memorandu.	60	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/02/1996	Deft files Pro Se: Motion fro appointment of counsel.	61	Image
04/02/1996	Deft files Pro Se: Petition for writ of Habeas Corpus ad-subjiciendum. (Rouse, J. ntfd w/copies 59,60,61,62,)	62	Image
08/12/1996	Deft files pro se motion to withdraw prior motion to withdraw guilty plea and request for new trial without prejudice. (Rouse, J. - notified with copy)	63	Image
08/30/1996	Motion (P#61) allowed. Rouse, J.		
08/30/1996	Committee for Public Counsel Services appointed.		
08/04/1998	Deft files motion for funds for a mental health practioner. (Rouse, J notified w/copy)	64	Image
08/04/1998	Deft files motion for funds for transcription of plea colloquy. (Rouse, J notified w/copy)	65	Image
08/28/1998	Motion (P#64) denied as endorsed. Rouse, J.		
08/28/1998	Deft not in Court. Motion (P#63) allowed		
03/13/2001	Deft files pro - se motion to waive fees and affidavit in support of. (Rouse, J. and Ralph Martin notified with copies and docket entries 3/13/01)	66	Image
03/29/2001	Deft files Pro Se Motion to waive filing fees and costs with affidaivit in support	67	Image
03/29/2001	Deft files Pro Se Motion to appoint counsel	68	Image
03/29/2001	Deft files Pro Se Motion for an evidentiary hearing	69	Image
03/29/2001	Deft files Pro Se Motion to withdraw guilty plea and for a new trial with affidavit of Craig Hood and Memorandum of law	70	Image
05/04/2001	Deft files pro-se: motion for Leave of Court to Add to the Record Exhibits Supporting the Defendant's Claims within his Motion for New Trial.	71	Image
05/21/2001	Motion (P#66) allowed. Rouse, J.		
05/21/2001	Motion (P#68) allowed. CPCS Appeals Division notified. Rouse, J.		
06/07/2001	Deft files Motion for an order for C.P.C.S. to bypass the screening process of defendant's new trial motion.(Rouse, J. notified 7/11/01)	72	Image
06/07/2001	Deft files second motion for leave of court to add exhibits to the record. (Rouse, J. notified 7/11/01)	73	Image
06/19/2001	Letter received from Chief Counsel William Leahy of C.P.C.S. notifying court that he declines to appoint counsel to represent pursuant to general laws Ch.211D. (Rouse, J. notified 7/11/01)		
07/16/2001	Motion (P#72) denied (Rouse, J.) (Defendant, Pro Se and R. Martin, DA notified 7/20/01)		
07/16/2001	Motion (P#73) denied without prejudice to renew upon filing the attached exhibits. (Rouse, J.) (Defendant, Pro Se and R. Martin, DA notified 7/20/01)		
07/16/2001	On defendant's pro se motion to withdraw guilty plea and for new trial (P#70), Commonwealth to file written opposition within 30 days of receipt of the order. (Defendant, Pro Se and R. Martin, DA notified 7/20/01)		
07/30/2001	Deft files pro-se: third motion for leave of Court to add exhibits to the record.	74	Image
08/20/2001	Commonwealth files notice of appearance.	75	Image
08/20/2001	Commonwealth files motion for additional time to file a memorandum in opposition to defendant's motion to withdraw guilty plea and for a new trial.	76	Image
08/23/2001	Motion (P#76) allowed. Commonwealth has until 9/20/01 to file opposition to defendant's motion to withdraw guilty plea and for new trial. (P. Smyth, notified in person - Defendant notified via mail 8/29/01)		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/23/2001	Motion Paper #74 endorsed. Commonwealth has until 9/20/01 to file opposition to the within motion. (P. Smyth, ADA & Defendant notified 8/29/0).		
08/24/2001	Deft files Pro Se Motion to Strike and Waive any Pleadings given in Response by the Commonwealth in Opposition to the Defendant's New Trial Motion for their Failure to Comply with Judge's Order that a Response was Required within Thirty Days upon Receipt of the Order. (Rouse, J. notified 9/17/01)	77	Image
09/20/2001	Commonwealth files Opposition to defendant's motion to withdraw guilty plea and for a new trial. (Rouse, J. notified 9/24/01)	78	Image
09/28/2001	Deft files reply to the Commonwealth's opposition to his motion to withdraw quilty plea and for new trail. (Rouse, J with a copy of motion and docket sheets)	79	Image
01/17/2002	After review and consideration of submissions and for the reason stated in the Commonwealth's opposition, the defendant's Motion (P#70) denied (Rouse, J.). (Defendant and P. Smyth, ADA notified 1/22/02)		
01/17/2002	Motion (P#74) allowed (Rouse, J.) (Defendant and P. Smyth, ADA notified 1/22/02)		
01/28/2002	Deft files Pro se appeal from the denial of the defendant's new trial motion to withdraw his guilty plea.	80	Image
01/31/2002	Copy of Pro Se notice of appeal mailed to Rouse,J and Paul H.Smyth,ADA		
01/31/2002	Notice sent to Assistant District Attorneys that transcripts are available.		
01/31/2002	Transcript of June I9, I995 mailed to defendant, pro se at Cedar Junction.		
02/20/2002	Certificate of delivery of transcript by clerk filed.	81	Image
02/20/2002	Second notice sent to Assistant District Attorneys that transcripts are available.		
03/04/2002	Certificate of delivery of transcript by clerk filed.	82	Image
03/04/2002	Notice of completion of assembly of record sent to clerk of Appeals Court and attorneys for the Commonwealth and defendant.		
03/04/2002	Two (2) certified copies of docket entries, original and copy of transcript, two (2) copies of exhibit list and list of documents, Copy of #70,78-80, each transmitted to clerk of appellate court.(R.Daly,ADA - Paul Hart Smyth,ADA - Craig Hood, Pro Se)		
12/03/2002	Rescript received from Appeals Court; judgment AFFIRMED "Order Denying Motion to withdraw Guilty Plea and for New Trial"., filed. (Parties notified 12/5/02)	83	Image
12/24/2009	Deft files Motion for written findings of fact	84	Image
12/24/2009	Deft files Motion for leave to submit post-hearing memorandum and proposed findings of fact	85	Image
12/24/2009	Deft files Motion for leave to withdraw guilty pleas and for a new trial with affidavit in support thereof (Notice sent Rouse, C.J. w/copy and docket sheets 1/25/10)	86	Image
03/08/2010	Re: P#86 - Commonwealth to file response by 4/8/10. Rouse, CJ		
04/27/2010	Commonwealth files: Motion to enlarge times for filing its opposition to the defendant's motion to vacate his plea.	87	Image
04/27/2010	Commonwealth files : Notice of appearance.		
05/05/2010	MOTION (P#87) Allowed Rouse, CJ. (Z. Hillman, ADA, B. Grossber, Atty notified 5/14/10)		
06/30/2010	Docket Note: On Paper number 88. In Attachment 4, page number 9 is missing. Copies were requested on 10/27/2022.		
06/30/2010	Commonwealth files Opposition to the Defendants third motion to vacate plea (Rouse, CJ notified 9/10/10)	88	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
09/09/2010	Deft files Reply to Commonwealth's opposition to the deft's motion to vacate guilty plea (Rouse, CJ and ADA Z. Hillman notified 9/10/10)	89	Image
09/09/2010	Deft files Motion for a status hearing (Rouse, CJ and ADA Z. Hillman notified 9/10/10)	90	Image
08/10/2011	Defendant brought into court.		
08/10/2011	After hearing Motion for Leave to Withdraw Guilty Pleas and for New Trial P#86, Taken Under Advisement. Rouse, C. J. - Z. Hillman, ADA - B. Grossberg, Attorney - C. Sproul, Court Reporter.		
06/19/2012	MEMORANDUM of DECISION & ORDER: on the defendant's motion for leave to withdraw guilty pleas and for new Trial filed. Rouse, CJ Parties notified with copy.	91	Image
06/19/2012	MOTION (P#86) denied. Rouse, CJ Parties notified.		
07/13/2012	NOTICE of APPEAL FILED by Craig Hood. (Rouse, CJ notified)	92	Image
08/20/2012	Deft files Motion for Reconsideration of Defendant's Motion for Leave to withdraw Guilty Pleas and for a New Trial.	93	Image
09/20/2012	Notice sent on 9/20/2012 (Paper #93).		
02/01/2013	MOTION (P#93) denied. Rouse, CJ (B. Grossberg, Attorney and Z. Hillman, ADA notified)		
02/14/2013	NOTICE of APPEAL FILED by Defendant Craig Hood	94	Image
03/19/2013	Court Reporter Sproul, Carolyn (per diem) is hereby notified to prepare one copy of the transcript of the evidence of 08/10/2011 . Hearing before Rouse, J		
04/24/2013	Deft files motion to be declared indigent.	95	Image
06/12/2013	Defendant came into court. CPCS Appeals Court to represent for Appeallate purposes. Deft at MCI Concord. Wilson, Mag - JAVS - M. Tumposky, Attorney		
09/30/2013	Deft files: Pro se: Motion to be declared indigent and affidavit of indigency	96	Image
10/08/2013	MOTION (P#96) see endorsement (Ball Justice). (Notified Atty Carol Beck - CPCS and Defendant with Copy of Motion).		
02/11/2014	Appointment of Counsel Theodore F Riordan, pursuant to Rule 53	97	
04/11/2014	Transcript of testimony received from Transcript of proceedings from Court Reporter Sproul, Carolyn (per diem)Hearing re: Status 08/10/2011		
04/14/2014	Transcript mail to ADA Zanini and Atty Riordan		
04/16/2014	Notice of completion of assembly of record sent to clerk of Appeals Court and attorneys for the Commonwealth and defendant.		
04/16/2014	Two (2) certified copies of docket entries, original and copy of transcript, and copy of the notice of appealPaper #'s 92 and 94), each transmitted to clerk of appellate court.		
03/18/2015	Rescript received from Appeals Court: Order entered on June 19, 2012, denying motion to withdraw guilty plea and for new trial..... judgment AFFIRMED (Notice w/copy to John Zanini, ADA and Attorney Theodore F. Riordan)	98	Image
03/25/2015	Defendant's MOTION To Withdraw, filed (Notice sent w/ copies of docket sheets to Cheif Justice, Fabricant) 3/25/15	99	
07/19/2018	Jennifer Holly O'Brien, Esq., Frank Dennis Camera, Esq.'s Joint Notice of appearance... filed	100	Image
07/30/2018	Attorney appearance On this date Jennifer Holly O'Brien, Esq. added as Private Counsel for Defendant Craig G Hood		
07/30/2018	Attorney appearance On this date Frank Dennis Camera, Esq. added as Private Counsel for Defendant Craig G Hood		
07/30/2018	Attorney appearance On this date Theodore Francis Riordan, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Craig G Hood		

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Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/16/2018	Defendant 's Motion for Post Conviction Discovery with Affidavit and Memorandum, Filed. (Copy and Docket Sheet sent to Roach, RAJ)	101	Image
12/10/2018	Endorsement on Motion for post conviction discovery, (#101.0): Other action taken "Commonwealth to respond to this motion within 45 days, by no later than 1/25/19" Copy to J. O'Brien, Atty, F. Camera, Attorney, N. Brandt, ADA)		
12/10/2018	Attorney appearance @On this date John P Zanini, Esq. @dismissed/withdrawn @as Private Counsel @for Prosecutor Commonwealth		
12/10/2018	Attorney appearance @On this date John P Pappas, Esq. @added @as Attorney for the Commonwealth @for Prosecutor Commonwealth		
12/10/2018	Attorney appearance @On this date Nicholas Brandt, Esq. @added @as Attorney for the Commonwealth @for Prosecutor Commonwealth		
12/10/2018	Commonwealth Nicholas Brandt, Esq.'s Notice of Appearance, Filed	102	Image
02/12/2019	Commonwealth 's Notice of Discovery (Copy with docket sheets sent to Roach, RAJ) 2/19/19-"No action necessary"' Roach, RAJ	103	Image Image
05/15/2019	Commonwealth 's Notice of discovery filed (Copy with docket sheets sent to Roach, RAJ)	104	Image
07/02/2020	Defendant 's Motion (Third) to vacate guilty pleas and for new trial, with submission of attached exhibits (filed) Grand Jury Minutes pages 1-6 and pages 19-23 FILED UNDER SEAL pursuant to M.G.L. Ch. 268, sect. 13D(e) Copy of motion with docket sheets and original grand jury minutes sent to Roach, RAJ	105	Image Image
07/09/2020	Endorsement on Defendant 's Motion (Third) to vacate guilty pleas and for new trial, (#105.0): Other action taken " Commonwealth to respond in a single pleading within 90 days, by no later than 10/07/20" Copy of endorsement to F. Camera, Attorney and C. Campbell, ADA		Image
07/09/2020	Attorney appearance On this date Nicholas Brandt, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Commonwealth		
07/09/2020	Attorney appearance On this date John P Pappas, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Commonwealth		
07/09/2020	Attorney appearance On this date Cailin Campbell, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth		
07/09/2020	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Frank Dennis Camera, Esq. Attorney: Cailin Campbell, Esq.		
08/10/2020	Defendant 's Motion for temporary stay of sentence and memorandum of law in support of same filed (Copy with docket sheets and notice sent to Roach, RAJ)	106	Image
08/26/2020	Commonwealth 's Notice of Appearance and Request for Additional Time to Reply to Defendant's Motion for Temporary Stay of His Sentence	107	Image
08/26/2020	Attorney appearance On this date Cailin Campbell, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Commonwealth		
08/26/2020	Attorney appearance On this date Darcy A Jordan, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth		
08/26/2020	Endorsement on Commonwealth 's Notice of Appearance and Request for Additional Time to Reply to Defendant's Motion for Temporary Stay of His Sentence, (#107.0): ALLOWED Motion for additional time is ALLOWED for the reason stated. Commonwealth shall have until September 9, 2020 to file its responsive pleading. (The parties so notified via e-mail).		Image

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Docket Date	Docket Text	File Ref Nbr.	Image Avail.
09/15/2020	Opposition to paper #106.0 Defendant's motion to stay execution of his sentence filed by Commonwealth Grand Jury Minutes FILED UNDER SEAL pursuant to M. G. L. c. 268, Sect. 13D(e) Copy of motion with docket sheets and copy of Grand Jury Minutes sent to Roach, RAJ	108	Image
09/22/2020	Commonwealth 's Supplement to it's Opposition to the Defendant's Motion to Stay Execution of Sentence, filed	109	Image
09/23/2020	Endorsement on Defendant 's Motion for temporary stay of sentence and memorandum of law in support of same, (#106.0): DENIED "Following review, motion DENIED. Please see ruling of this date" Copy to D. Jordan, ADA C. Campbell, ADA J. O'Brien, Attorney		Image
09/23/2020	Order RE: COVID 19 Motion to Stay Sentence DENIED See attached Order (RULINGS ON MOTIONS TO STAY SENTENCES) Copy to D. Jordan, ADA C. Campbell, ADA J. O'Brien, Attorney	110	Image
09/23/2020	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Jennifer Holly O'Brien, Esq. Prosecutor: C. Campbell,' ADA.3 Prosecutor, Attorney: Darcy A Jordan, Esq. Suffolk County District Attorney		
10/07/2020	Commonwealth 's Request for Additional Time to File its Response to Defendant's Motion to Vacate His Plea, filed	111	Image
10/07/2020	Endorsement on Request for Additional Time to File Its Response to the Defendant's Motion to Vacate His Plea, (#111.0): ALLOWED (Notice sent with copy of Endorsement to ADA D. Jordan and Atty. J. O'Brien)		Image
11/20/2020	Commonwealth 's Request for Additional Time to File it's Response to the Defendant's Motion to Vacate his Plea (Notice sent to Roach-RAJ with copy of Request and Docket Sheets).	112	Image
11/25/2020	Endorsement on Commonwealth's request for additional time to file it's response to the defendant's motion to vacate his plea, (#112.0): ALLOWED "Motion for extension to 12/4/20 is ALLOWED" Copy to D. Jordan, ADA and Attorney J. O'Brien Judge: Roach, Christine M		Image
11/30/2020	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Jennifer Holly O'Brien, Esq. Prosecutor, Attorney: Darcy A Jordan, Esq.		
12/07/2020	Attorney appearance On this date Darcy A Jordan, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Commonwealth		
12/07/2020	Attorney appearance On this date Donna Jalbert Patalano, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth		
12/07/2020	Commonwealth Donna Jalbert Patalano, Esq.'s Notice of Appearance of Counsel filed	113	Image
12/07/2020	Commonwealth 's Request for an Enlargement of Time to Respond to the Defendant's fourth Motion to Vacate 1995 Plea filed (Copy with notice and docket sheets sent to Roach, RAJ)	114	Image
12/11/2020	Endorsement on Request for an Enlargement of Time to Respond to the Defendant's fourth Motion to Vacate 1995 Plea filed, (#114.0): ALLOWED Extension to Friday 12/18/2020 is allowed (Notice sent to ADA D. Patalano via email with copy of Endorsement)		Image
12/18/2020	Commonwealth 's Notice of Post-Conviction Discovery, with copy of Transcripts (Notice sent to Roach-RAJ, with copy of Notice and Docket Sheets)	115	Image
12/21/2020	Endorsement on Notice of Post-Conviction Discovery, (#115.0): No Action Taken Judge: Roach, Christine M		
12/29/2020	Opposition to paper #105.0 to the defendant's Third motion to Vacate his Pleas and for New trial, filed by Commonwealth (Notice sent to Ullman, RAJ. with copy (P#116) and docket sheets)	116	Image

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Docket Date	Docket Text	File Ref Nbr.	Image Avail.
01/11/2021	Commonwealth 's Motion to Strike its Record Appendix Filed on Dec. 24, 2020 with its Opposition to the Defendant's Fourth Motion for New Trial, to Seal the Grand Jury Minutes included in the Record Appendix, and to Docket a Redacted Record Appendix MOTION FILED ON 1/5/21 AND "ALLOWED WITHOUT OPPOSITION" ON 1/11/21 J. SQUIRES-LEE	117	Image
01/15/2021	Docket Note: (Resending copy (P#116) and docket sheets to Squires-Lee, J.)		
01/15/2021	Docket Note: Grand Jury Minutes related to "Commonwealth 's Motion to Strike its Record Appendix Filed on Dec. 24, 2020 with its Opposition to the Defendant's Fourth Motion for New Trial, to Seal the Grand Jury Minutes included in the Record Appendix, and to Docket a Redacted Record Appendix" SEALED pursuant to M.G.L. Ch. 268, Sect. 13D(e)	118	
01/26/2021	Defendant 's Motion to Add Supplemental Argument to Third Motion for New Trial filed.	119	Image
01/26/2021	Defendant Craig G Hood files Supplement to Defendant 's Motion (Third) to vacate guilty pleas and for new trial (#105.0) Defendant's Supplemental Argument in Support of His Third Motion for New Trial and Request for an Evidentiary Hearing filed.	120	Image
02/08/2021	Commonwealth 's Motion for a Court Order Regarding Attorney-Client Privilege and Reciprocal Discovery	121	Image
02/19/2021	Defendant not present. In custody. A Status Conference was held via Zoom. After hearing, Defendant's Motion to Add Supplemental Argument to Third Motion for New Trial is allowed. The matter to have future date scheduled following receipt of Defendant's Opposition to Commonwealth 's Motion for a Court Order Regarding Attorney-Client Privilege and Reciprocal Discovery. D. Squires-Lee, J - T. Castillo, ACM - M. Regan, ACM (Zoom)- D. Patalano, ADA (Zoom) - J. O'Brien, Attorney (Zoom) - F. Camera, Attorney (Zoom) - FTR at 11:04.		
02/19/2021	Endorsement on Defendant's Motion to Add Supplemental Argument to Third Motion for New Trial, (#119.0): ALLOWED "After hearing and without opposition, ALLOWED." J. Squires-Lee, 2/19/21.		Image
02/22/2021	Defendant 's Motion in Opposition to Commonwealth's Motion for Access to Defense File and to Pierce Privileges Held by Defendant	122	Image
02/23/2021	Commonwealth 's Notice of Post-Conviction Discovery	123	Image
03/16/2021	Endorsement on Commonwealth's Motion for a Court Order Regarding Attorney-Client Privilege and Reciprocal Discovery, (#121.0): Other action taken "After review, allowed-in-part and denied-in-part. See Decision and Order of today's date. J. Debra Squires-Lee, 3/16/21.		Image
03/16/2021	MEMORANDUM & ORDER: Order on Commonwealth's Motion for a Court Order Regarding Attorney-Client Privilege and Reciprocal Discovery Judge: Squires-Lee, Hon. Debra A	124	Image
04/01/2021	Event Result:: Conference to Review Status scheduled on: 04/01/2021 09:30 AM Has been: Held as Scheduled Deft presence waived Cont to 8/4/21 by agreement Re: Evidentiary Hearing (III, 808) 9am - Full Day Habe needed for Deft. Hon. Debra A Squires-Lee, Presiding Appeared Via Zoom: ADA/D. Patalano, Attys./ J. O'Brien, F. Camera Mary Regan, Assistant Clerk Magistrate FTR: 9:48am		
04/15/2021	Commonwealth 's Motion Renewal of its Motion for a Court Order Regarding Attorney-Client Privilege and Reciprocal Discovery (Notice sent to Hon. Debra A Squires-Lee with copy of Motion and Docket Sheets)	125	Image
04/23/2021	Endorsement on Motion , (#125.0): Other action taken Defendant to Respond on or Before May 7, 2021 Judge: Squires-Lee, Hon. Debra A		Image

Docket Date	Docket Text	Flle Ref Nbr.	Image Avail.
05/20/2021	Attorney appearance On this date Jennifer Jean Hickman, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth		
05/21/2021	Commonwealth 's Notice of Appearance, Filed Judge: Squires-Lee, Hon. Debra A	126	Image
07/29/2021	Habeas Corpus for defendant issued to MCI - Concord returnable for 08/04/2021 09:00 AM Evidentiary Hearing on Suppression. TO BE TRANSPORTED Habe faxed to MCI Concord, confirmation in file	127	Image
07/30/2021	Commonwealth 's Motion to continue Evidentiary Hearing from August4, 2021 to September 29, 2021, to Accommodate Necessary Witnesses, Filed Attorney: Patalano, Esq., Donna Jalbert Judge: Squires-Lee, Hon. Debra A	128	Image
08/02/2021	Endorsement on Motion , (#128.0): DENIED Court intends to Proceed with Evidence that can be presented on Aug. 4, 2021D. Squires-Lee/J Attorney: Patalano, Esq., Donna Jalbert Judge: Squires-Lee, Hon. Debra A		Image
08/03/2021	Commonwealth 's Motion to Reconsider filed and Allowed . Hearing Continued to December 22, 2021 in Courtroom 713. No Further Continuances. D. Squires-Lee/J Attorney: Patalano, Esq., Donna Jalbert Judge: Squires-Lee, Hon. Debra A	129	Image
08/03/2021	Event Result:: Evidentiary Hearing on Suppression scheduled on: 08/04/2021 09:00 AM Has been: Rescheduled For the following reason: Request of Commonwealth Comments: with the assent of the Defendant Hon. Debra A Squires-Lee, Presiding Staff: Constance Goll, Assistant Clerk Magistrate Mary Regan, Assistant Clerk Magistrate		
08/03/2021	Docket Note: Habe for 8/4/21 cancelled		
08/09/2021	Commonwealth 's Motion to reschedule filed and Allowed as endorsed Clerk to schedule a Scheduling Hearing to select a new date, all Counsel are directed to communicate with all witnesses in advance. D. Squires-Lee/J Attorney: Patalano, Esq., Donna Jalbert Judge: Squires-Lee, Hon. Debra A	130	Image
08/09/2021	Event Result:: Evidentiary Hearing on Suppression scheduled on: 12/22/2021 09:00 AM Has been: Rescheduled For the following reason: Request of Commonwealth Hon. Debra A Squires-Lee, Presiding		
08/12/2021	Defendant's presence waived Conference to Review Status: Held as Scheduled Case continued by agreement to January 28, 2022 at 9:00AM, re: Evidentiary Suppression, Ninth Criminal Session, Ctrm 713 **LIVE Habe to MCI Concord needed Hon. Debra A Squires-Lee, Presiding Constance Goll, Assistant Clerk Magistrate Mary Regan, Assistant Clerk Magistrate J. Hickman, ADA (Via Zoom) D. Patalano, ADA (Via Zoom) F. Camera, Attorney (Via Zoom) J. O'Brien, Attorney (Via Zoom) FTR:2:00PM		
08/12/2021	Habeas Corpus for defendant issued to MCI - Concord returnable for 01/28/2022 09:00 AM Evidentiary Hearing on Suppression. TO BE TRANSPORTED	131	Image
12/20/2021	Defendant 's Notice of Withdrawal of Counsel,filed Attorney: Camera, Esq., Frank Dennis Judge: Squires-Lee, Hon. Debra A	131.1	Image

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Docket Date	Docket Text	File Ref Nbr.	Image Avail.
12/30/2021	Defendant 's Motion Defendant 's Motion for Post-Conviction Discovery - To Compel the Boston Police Department to Produce Records, with attachments (Copy of the Motion and Docket Sheets sent to Squires-Lee, J)	132	Image
12/30/2021	Defendant 's Motion to Continue Evidentiary Hearing Currently Scheduled for January 28, 2022 (Copy of the Motion and Docket Sheets sent to Squires-Lee, J)	133	
01/11/2022	Defendant 's Motion For Jennifer O'Brien to Withdraw as Private Counsel, filed Attorney: O'Brien, Esq., Jennifer Holly	134	Image
01/19/2022	Endorsement on Motion to Withdraw as Private Counsel, (#134.0): ALLOWED Judge: Squires-Lee, Hon. Debra A		Image
01/19/2022	Event Result:: Evidentiary Hearing on Suppression scheduled on: 01/28/2022 09:00 AM Has been: Canceled For the following reason: Request of Deft Hon. Debra A Squires-Lee, Presiding Staff: Mary Regan, Assistant Clerk Magistrate		
01/19/2022	Attorney appearance On this date Jennifer Holly O'Brien, Esq. dismissed/withdrawn as Private Counsel for Defendant Craig G Hood		
01/19/2022	Attorney appearance On this date Jennifer Holly O'Brien, Esq. added as Appointed - Indigent Defendant for Defendant Craig G Hood		
01/21/2022	Attorney appearance On this date Frank Dennis Camera, Esq. dismissed/withdrawn as Private Counsel for Defendant Craig G Hood		
01/21/2022	Attorney appearance On this date Lorenzo Perez, Esq. added as Appointed - Indigent Defendant for Defendant Craig G Hood		
01/26/2022	Habeas Corpus for defendant issued to MCI - Concord returnable for 01/28/2022 09:00 AM Conference to Review Status. Zoom Hearing ONLY Meeting ID: 160 9051 1951 No Passcode	135	Image
01/26/2022	Defendant 's Motion to be Cleared Indigent with affidavit of Indigency, filed and impounded.	136	Image
01/26/2022	Lorenzo Perez, Esq., Jennifer Holly O'Brien, Esq.'s Notice of appearance filed	137	Image
01/28/2022	Endorsement on Motion to be declared indigent, (#136.0): ALLOWED (Attested by J. Oliver, Sessions Clerk)		
01/28/2022	Event Result:: Conference to Review Status scheduled on: 01/28/2022 09:00 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. Debra A Squires-Lee, Presiding Staff: Mary Regan, Assistant Clerk Magistrate		
01/28/2022	Defendant present via Zoom from MCI Concord. Conference to Review Status RE: Schedule and Discovery held via Zoom. After hearing, defendant's motion to be declared indigent (Paper #136) ALLOWED (Squires-Lee, J. Attested to by J.Oliver, Sessions Clerk) Case continued by agreement to 4/29/2022 for Conference to Review Status RE: Further Discovery and Scheduling at 3:00 PM in Criminal 9 (CtRm 713) (Via Zoom, Zoom HABE needed to MCI Concord) Squires-Lee, J. J. Oliver, Sessions Clerk D. Patalano, ADA (Via Zoom) J. Hickman, ADA (Via Zoom) J. O'Brien, Atty (Via Zoom) L. Perez, Atty (Via Zoom) 9:05 AM FTR		
01/28/2022	Commonwealth 's Notice of Withdrawal.filed Attorney: Patalano, Esq., Donna Jalbert	138	Image
01/28/2022	Attorney appearance On this date Donna Jalbert Patalano, Esq. dismissed/withdrawn as Attorney for the Commonwealth for		

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Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Prosecutor Commonwealth		
01/31/2022	Defendant 's EX PARTE Motion for funds to Hire an Investigator, Filed with Affidavit in Support Copy sent via Email this day to D. Squires-Lee, J Attorney: Perez, Esq., Lorenzo	139	Image
02/07/2022	Endorsement on Motion for funds , (#139.0): ALLOWED Attorney Perez notified via email with Copy of Endorsement this day Attorney: Perez, Esq., Lorenzo Judge: Squires-Lee, Hon. Debra A		Image
03/28/2022	Attorney appearance On this date Kathryn Sherman, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth		
03/28/2022	Commonwealth Kathryn Sherman, Esq.'s Notice of appearance of counsel filed	140	Image
04/25/2022	Habeas Corpus for defendant issued to MCI - Concord returnable for 04/29/2022 03:00 PM Conference to Review Status. **Do Not Transport*** Zoom dial-in #: 646-828-7666 Meeting ID: 160 9051 1951 - No Password Needed Judge: Squires-Lee, Hon. Debra A	141	Image
04/29/2022	Event Result:: Conference to Review Status scheduled on: 04/29/2022 03:00 PM Has been: Held as Scheduled Deft appears via Zoom from MCI Concord Parties to draft an Order to the BPD Legal Department an email to the Clerk for Endorsement Commonwealth to file Memorandum regarding email and letter Cont to 6/3/22 (IX, 713) in at 3PM via zoom Zoom habe to Issue to MCI Concord P# 125 Allowed without objection from the Defendant Squires-Lee, J. Sitting in Brockton Superior Appeared via Zoom: K. Sherman, ADA (Via Zoom) J. Hickman, ADA (Via Zoom) J. O'Brien, Atty (Via Zoom) L. Perez, Atty (Via Zoom) Mary D. Regan/ACM 3:04 PM FTR		
04/29/2022	Endorsement on Motion , (#125.0): ALLOWED without objection from the Defendant Judge: Squires-Lee, Hon. Debra A		Image
05/09/2022	Defendant 's Motion for Commonwealth to produce information/evidence regarding Rachel Rollins' concern about Detective Daniel Keeler filed	142	Image
05/12/2022	Endorsement on Motion for Commonwealth to produce information/evidence regarding Rachel Rollins' concern about Detective Daniel Keeler filed, (#142.0): ALLOWED "After hearing, Allowed-in-part. As discussed at April 29, 2022 conference, the Commonwealth shall file a report concerning the investigation undertaken, including identifying present and former members of SCDAO from whom responsive information was sought, and the results of said investigation." (Squires-Lee, J.) 5/12/2022 (Attested to by James Oliver, Sessions Clerk) (Copy of endorsement sent to parties via Electronic Mail)		Image
05/12/2022	ORDER: Judicial Order to Boston Police Department for Post-Conviction Discovery filed (Copy of Order sent to parties via Electronic Mail) (Parties proposed orders attached)	143	Image
06/01/2022	Habeas Corpus for defendant issued to MCI - Concord returnable for 06/03/2022 03:00 PM Conference to Review Status. **Do Not Transport*** Zoom dial-in #: 646-828-7666 Meeting ID: 160 9051 1951 - No Password Needed Judge: Squires-Lee, Hon. Debra A	144	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
06/02/2022	Other 's Motion For Extension To Produce Documents, Filed By Omar Bennani , Assistant Corporation Counsel for Boston Police Department Squires- Lee/ J notified via email with copy. Judge: Squires-Lee, Hon. Debra A Applies To: Bennani, Esq., Omar (Other interested party)	145	Image
06/03/2022	Commonwealth 's Submission of inquiry into December 17th, 2021, email to the defense bar regarding Sgt. Det. Daniel Keeler filed	146	Image
06/03/2022	Endorsement on Motion for extension to produce documents, (#145.0): ALLOWED Attested to by James Oliver, Sessions Clerk		Image
06/03/2022	Defendant brought into court from MCI Concord via Zoom. Conference to Review Status held as scheduled. After hearing, BPD's motion endorsed as ALLOWED (Squires-Lee, J.) (Attested to by James Oliver, Sessions Clerk) Csae continued by agreement to 7/29/2022 RE: Hearing on Discovery Compliance/ Schedule Briefing at 2:00 PM in Courtroom 713 (Live Hearing, Live HABE issued to MCI Concord) (To be heard in front of Squires-Lee, J.) Squires-Lee, J. J. Oliver, Sessions Clerk J. Hickman, ADA (Via Zoom) K. Sherman, ADA (Via Zoom) L. Perez, Atty (Via Zoom) J. O'Brien, Atty (Via Zoom) 3:06 PM FTR		
06/03/2022	Habeas Corpus for defendant issued to MCI - Concord returnable for 07/29/2022 02:00 PM Hearing on Compliance. *Live Transport*	147	Image
06/14/2022	Commonwealth 's Request for Protective Order RE: "Judicial Order to Boston Police Department for Post-Conviction Discovery", filed.	148	Image
06/15/2022	Endorsement on Request for protective order RE: "Judicial order to Boston Police Department for post-conviction discovery", (#148.0): ALLOWED		Image
06/22/2022	Commonwealth 's Notice of Discovery I filed	149	Image
06/22/2022	Commonwealth 's Notice of Discovery II filed	150	Image
07/27/2022	Event Result:: Hearing on Compliance scheduled on: 07/29/2022 02:00 PM Has been: Rescheduled For the following reason: Transferred to another session Hon. James Budreau, Presiding Staff: James Oliver, Sessions Clerk		
07/29/2022	In custody defendant is brought to Court from MCI, Concord. Hearing re: Compliance is held as scheduled. Briefing schedule set as follows: Defendant's Supplemental Brief is due no later than 10/14/22 Commonwealth's Response is due no later than 12/09/22 Defendant's Reply, if any, is due no later than 12/30/22 Hearing on the Defendant's Motion for New Trial to be scheduled. The Court, via the Clerk's Office, will reach out to the parties in January for scheduling. Squires-Lee, J. - J. Araujo, ACM - J. Hickman and K. Sherman, ADAs - L. Perez and J. O'Brien, Attys. - FTR 2:15 pm		
09/06/2022	Defendant 's EX PARTE Motion for funds to retain an expert in coerced and false confessions filed	151	Image
09/06/2022	Endorsement on Motion for funds to retain an expert in coerced and false confessions, (#151.0): ALLOWED "Motion ALLOWED to the amount stated on the motion." (Squires-Lee, J.) (Attested to by James Oliver, Sessions Clerk) (Copy of endorsement sent to defense counsel via Electronic Mail)		Image
09/08/2022	Defendant 's EX PARTE Motion for funds to hire an investigator (2) filed	152	Image

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Docket Date	Docket Text	File Ref Nbr.	Image Avail.
09/08/2022	Endorsement on Motion for funds to hire an investigator (2), (#152.0): ALLOWED "Motion ALLOWED to amount stated. Further requests to be heard in person." (Squires-Lee, J.) (Attested to by James Oliver, Sessions Clerk)		Image
10/17/2022	Defendant 's Supplemental Memorandum of Law in Support of Defendant's Motion for a New Trial (Second) with records appendix and zip drive, filed. IMPOUNDED (copy of memorandum, Clerks Notice, docket sheets and ORIGINAL ZIP DRIVE sent to Squires-Lee, J.)	153	Image
11/17/2022	Commonwealth 's Request For Additional Time To File Its Response To The Defendant's Supplemental Memorandum To His Motion For A New Trial, filed (Docket Sheets, Clerk's Notice and Motion sent to Squires-Lee, J)	154	Image
11/21/2022	Endorsement on Request for additional time to file its response to the defendant's supplemental memorandum to his motion for a new trial, (#154.0): ALLOWED "ALLOWED. Commonwealth shall respond to Defendant's Supplemental Memorandum in Support of Motion for New Trial on or before February 17, 2023. Defendant shall have until March 23rd, 2023 to file reply brief." (Squires-Lee, J.) (Attested to by James Oliver, Sessions Clerk) (Copy of endorsement sent to parties via electronic mail)		Image
02/21/2023	Commonwealth 's Supplemental Memorandum in Opposition to the Defendant's Fourth Motion to Vacate his Pleas and for a New Trial, with Supporting Documents, filed (Copy, Notice, and Docket sent to Squires-Lee, J.)	155	Image
03/16/2023	Commonwealth 's Notice of withdrawal on March 21, 2023, filed	156	Image
04/28/2023	Attorney appearance On this date Sarah Montgomery Lewis, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth		
04/28/2023	Commonwealth Sarah Montgomery Lewis, Esq.'s Notice of appearance, filed	157	Image
05/09/2023	Habeas Corpus for defendant issued to MCI - Concord returnable for 05/15/2023 02:00 PM Conference to Review Status. Transport to Court	158	Image
05/15/2023	Defendant brought into Court. Status conference held before Squires-Lee, J After hearing the Court Squires-Lee will determine the next steps in regarding of conducting an evidentiary hearing at a later date Hon. Debra A Squires-Lee, Presiding Appeared ADA J. Hickman and S. Lewis Atty J. O'Brien and L. Perez FTR 2:10 Kristen Zitano, Assistant Clerk Magistrate		
05/25/2023	ORDER: Regarding evidentiary hearing on defendants third motion to vacate guilty pleas and for new trial Parties notified electronically this day	159	Image
09/12/2023	Habeas Corpus for defendant issued to MCI - Concord returnable for 09/15/2023 09:00 AM Hearing on Motion for New Trial. LIVE TRANSPORT Faxed to MCI Concord 9/12/23 and 9/13/23 Confirmations in file	160	Image
09/15/2023	Commonwealth 's Notice of Discovery III Filed	161	Image
09/15/2023	Commonwealth 's Notice of Discovery IV filed	162	Image
09/15/2023	Defendant brought into court Hearing on Motion for New Trial scheduled on: 09/15/2023 09:00 AM Has been: Held as Scheduled Witness List filed Exhibit List filed Case to be continued, Court availability to be determined, parties will be notified of available dates ADA J Hickman - ADA S Lewis - Attorney Jen O'Brien - Attorney Lorenzo Perez - FTR:9:18 Hon. D. Squires- Lee, Presiding Constance Goll, Assistant Clerk Magistrate		
09/15/2023	List of exhibits List of exhibits filed RE: Hearing held September 15, 2023 (Two Exhibits Envelopes - #1 - Exhibits, 2- Impounded Exhibits	163	Image

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Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Applies To: Hickman, Esq., Jennifer Jean (Attorney) on behalf of Commonwealth (Prosecutor); Perez, Esq., Lorenzo (Attorney) on behalf of Hood, Craig G (Defendant); O'Brien, Esq., Jennifer Holly (Attorney) on behalf of Hood, Craig G (Defendant); Lewis, Esq., Sarah Montgomery (Attorney) on behalf of Commonwealth (Prosecutor)		
09/15/2023	Witness list filed RE: Hearing held September 15, 2023 Applies To: Hickman, Esq., Jennifer Jean (Attorney) on behalf of Commonwealth (Prosecutor); Perez, Esq., Lorenzo (Attorney) on behalf of Hood, Craig G (Defendant); O'Brien, Esq., Jennifer Holly (Attorney) on behalf of Hood, Craig G (Defendant); Lewis, Esq., Sarah Montgomery (Attorney) on behalf of Commonwealth (Prosecutor)	164	
10/30/2023	Event Result:: Hearing on Motion for New Trial scheduled on: 11/02/2023 09:00 AM Has been: Canceled For the following reason: By Court prior to date Hon. Debra A Squires-Lee, Presiding Staff: Joanne Araujo, Assistant Clerk Magistrate		
10/31/2023	Habeas Corpus for defendant issued to MCI - Concord returnable for 11/03/2023 09:00 AM Hearing on Motion for New Trial. Live Transport	165	Image
11/03/2023	Commonwealth 's Notice of Discovery V	166	Image
11/03/2023	List of exhibits re: Continuation of Motion for New Trial (held on 11/3/23 in CTRM 906)	167	Image
11/03/2023	In custody defendant is brought to court. Continuation of Defendant's Hearing on Motion for New Trial is held as scheduled. Evidence resumes with testimony of Attorney Leslie O'Brien. Hearing suspends at approximately 4:00 pm. Issue regarding transcript of 9/15/23 hearing to be resolved at some future date. Further hearing date to be scheduled between the Court, parties and witness. Squires-Lee, J. - J. Araujo, ACM - J. Hickman and S. Montgomery-Lewis, ADAs - J. O'Brien and L. Perez, Attys. - FTR 11:27 am		
11/03/2023	Docket Note: Per Court Order, Exhibit List incorporated into the Transcript of the Hearing conducted on 9/15/23 and received on 11/3/23 is docketed to supplemental Exhibit List (P#163) docketed on 9/15/23		
11/03/2023	List of exhibits of evidence taken on 9/15/23. Per Squires-Lee's Order, this list is to supplemental the exhibit list, Paper #163, previously docketed on 9/15/23	168	Image
02/20/2024	Defendant 's Motion for Expedited Transcripts and for Funds Equal to One Half of the Cost for Transcripts ALLOWED. Squires-Lee, J. Attest J. Araujo	169	Image
03/19/2024	Habeas Corpus for defendant issued to MCI - Concord returnable for 03/29/2024 09:00 AM Hearing on Motion for New Trial. Live Transport	170	Image
03/27/2024	Event Result:: Hearing on Motion for New Trial scheduled on: 03/29/2024 09:00 AM Has been: Canceled For the following reason: By Court prior to date Hon. Debra A Squires-Lee, Presiding Staff: Michelle Pierce, Assistant Clerk Mary Regan, Assistant Clerk Magistrate		
05/23/2024	Habeas Corpus for defendant issued to MCI - Concord returnable for 05/24/2024 09:00 AM Hearing on Motion for New Trial.	171	
05/24/2024	Defendant brought into court. Continuation of hearing on defendant's motion for new trial held as scheduled. Hearing continued to 6/28/24 at 9:00 AM. Hon. Debra A Squires-Lee, Presiding Danielle Bisson, Assistant Clerk Magistrate J. Hickman, ADA S. Lewis, ADA		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	J. O'Brien, Atty L. Perez, Atty FTR - 9:23 AM		
05/24/2024	Witness list Motion for new trial hearing on 5/24/24 Judge: Squires-Lee, Hon. Debra A Applies To: Commonwealth (Prosecutor); Hood, Craig G (Defendant)	172	
05/24/2024	List of exhibits Motion for new trial hearing on 5/24/24 Judge: Squires-Lee, Hon. Debra A Applies To: Commonwealth (Prosecutor); Hood, Craig G (Defendant)	173	Image
06/20/2024	Habeas Corpus for defendant issued to MCI - Concord returnable for 06/28/2024 09:00 AM Hearing on Motion for New Trial.	174	Image
06/28/2024	Defendant brought into court. Continuation of hearing on defendant's motion for new trial held as scheduled. Parties have until 9/27/24 to file any brief relating to the evidentiary hearing. Hon. Debra A Squires-Lee, Presiding Danielle Bisson, Assistant Clerk Magistrate J. Hickman, ADA S. Lewis, ADA J. O'Brien, Atty L. Perez, Atty FTR - 10:15AM, 11:32AM, 2:10PM		
06/28/2024	Witness list from hearing on defendant's motion for new trial held on 6/28/24 Applies To: Commonwealth (Prosecutor); Hood, Craig G (Defendant)	175	
06/28/2024	List of exhibits from hearing on defendant's motion for new trial held on 6/28/24 Applies To: Commonwealth (Prosecutor); Hood, Craig G (Defendant)	176	
07/01/2024	General correspondence regarding Documents from case. Mailed to Phillip Rise on 7/1/2024. See scan	177	Image
07/29/2024	Defendant 's Motion for expedited transcripts and for funds equal to one half the cost of transcripts; filed and ALLOWED. (Squires-Lee, J.)	178	Image
08/02/2024	Defendant 's motion for expedited transcripts and for funds equal to one half of the cost for funds equal to one half of the cost for transcripts, filed with affidavit Copy of motion, docket sheets and clerks notice sent to Judge Squires-Lee	179	Image
08/06/2024	Endorsement on Motion for expedited transcipts and for funds equal to one half of the cost for transcripts, (#179.0): ALLOWED		Image
09/19/2024	Commonwealth, Defendant 's Joint motion for an enlargement of time, filed Copy of motion, docket sheets and clerks notice sent to Judge Squires-Lee	180	Image
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11/25/2024	Endorsement on Motion for an enlargement of time, (#182.0): ALLOWED deadline to file post-hearing briefs extended to January 3, 2025. (Squires-Lee, J.)		Image
01/03/2025	Commonwealth 's post-hearing memorandum in opposition to the defendant's fourth motion to vacate his guilty pleas and for a new trial, filed Copy of motion, docket sheets and clerks notice sent to Judge Squires-Lee	183	Image
01/27/2025	Defendant 's motion to replace the signature page of Hood's affidavit(R.541), filed with affidavit of Jennifer H. O'Brien, and affidavit of Craig Hood Copy of motion, docket sheets and clerks notice sent to Judge Squires-Lee	184	Image
02/04/2025	Endorsement on Defendant 's motion to replace the signature page of Hood's affidavit(R.541), filed with affidavit of Jennifer H. O'Brien, and affidavit of Craig Hood, (#184.0): ALLOWED ALLOWED. Squires-Lee, J. 2/4/25		Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Parties notified electronically.		
03/31/2025	Defendant 's Post-Evidentiary Hearing Memorandum of Law, filed	185	Image
03/31/2025	Docket Note: Defendant's Post-Evidentiary Hearing Memorandum of Law sent directly to Judge Squires-Lee on 1/3/25. Motion received by Clerk's Office on this day. Motion docketed this day and is paper #185.		
04/30/2025	Post Evidentiary Hearing Order Judge: Squires-Lee, Hon. Debra A	186	Image
06/10/2025	MEMORANDUM & ORDER: ON DEFENDANT'S THIRD MOTION TO VACATE GUILTY PLEAS AND FOR NEW TRIAL DENIED Judge: Squires-Lee, Hon. Debra A	187	Image
06/16/2025	Notice of appeal filed by defendant regarding the denial of third motion for new trial.	188	Image
06/16/2025	Attorney appearance On this date David D McGowan, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth		
06/16/2025	Appeal: Statement of the Case on Appeal (Cover Sheet).	189	Image
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Case Disposition

Disposition	Date	Case Judge
Disposed by Plea	06/19/1995	

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THE TRIAL COURT OF THE
COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Superior Court Dept.
Nos. SUCR93-11566*
SUCR94-10740

2020 JUL -2 PM 4:35

****
Commonwealth *
*
v. *
*
Craig Hood *
****

DEFENDANT'S THIRD MOTION TO VACATE GUILTY PLEAS AND FOR NEW TRIAL

NOW COMES the defendant in the above entitled matter who hereby moves this Honorable Court, pursuant to Rule 30(b) of the Massachusetts Rules of Criminal Procedure, to vacate his guilty pleas and to grant him a new trial. In support of this motion, the defendant states the following: 1) new evidence has come to fruition since his guilty pleas that calls into serious question the innocence of the defendant; 2) the Commonwealth failed to disclose fully all exculpatory evidence against the defendant in violation of *Brady v. Maryland*, 373 U.S. 83 (1963); 3) he was deprived of effective assistance of counsel for his attorney's unilateral decision to withhold certain evidence from the defendant prior to trial; and 4) his plea was not knowing and voluntary because he was not privy to all of the evidence against him thus made such plea based upon only a partial picture of the Commonwealth's case.

In support of his motion, the defendant has attached hereto a memorandum of law and affidavits from the defendant and his trial attorney.

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Respectfully submitted,
Craig Hood,
By his attorneys,

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R 25

THE TRIAL COURT OF THE
COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Superior Court Dept.
Nos. SUCR93-11566
SUCR94-10740

****
Commonwealth *
*
v. *
*
Craig Hood *
****

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF HIS THIRD MOTION FOR NEW TRIAL

I. Procedural History

On November 16, 1993, a Suffolk County Grand Jury indicted the defendant for murder in the first degree (001 and 002), unlawful possession of a firearm (003 and 004), and assault and battery by means of a dangerous weapon (005) [Docket No. SUCR93-1156]. On May 16, 1994, a Suffolk County Grand Jury indicted the defendant for assault and battery on a correctional officer (001 and 002) and assault and battery by means of a dangerous weapon (003) [Docket No. 94-10740].[1]

The defendant was arraigned on Docket No. SUCR93-11566 on November 19, 1993 and on Docket No. SUCR94-10740 on June 15, 1994. On June 19, 1995, he pled guilty to all charges on both dockets. As a result, he was sentenced as follows:

Docket No. SUCR93-11566	(001)	-	life
	(002)	-	life from and after sentences imposed on 001, 003, 004, and 005
	(003)	-	4-5 years concurrent
	(004)	-	4-5 years concurrent

[1] The facts of those indictments are irrelevant to this motion; he does not seek to disturb such plea.

	(005)	-	7-10 years concurrent[2]
Docket No. SUCR94-10740	(001)	-	placed on file
	(002)	-	placed on file
	(003)	-	7-10 years concurrent with SUCR93-11566 (001).

On April 2, 1996, the defendant filed a pro se motion to withdraw guilty pleas and for new trial and, on August 12, 1996, he was permitted to withdraw the motion without prejudice. On March 29, 2001, the defendant filed another pro se motion to withdraw guilty pleas, which was denied on January 17, 2002 (Rouse, J., presiding). The Appeals Court subsequently affirmed the judgment. *Commonwealth v. Hood*, 56 Mass. App. Ct. 1107 (2002). In 2009, the defendant filed his second motion to withdraw guilty pleas and for new trial, this time with the assistance of appellate counsel. He argued that defense counsel was ineffective for failing to pursue a viable motion to suppress where the defendant was questioned by police, despite being represented by counsel in another matter, and for failing to properly explain the sentencing structure to him at the time of his plea. The motion judge denied the motion in 2012 (Rouse, J., presiding) and the Appeals Court affirmed the judgment in 2015. *Commonwealth v. Hood*, 87 Mass. App. Ct. 1105 (2015).

Relevant Facts

A. Commonwealth v. Sean Ellis/Terry Patterson – the murder of Detective John Mulligan

On September 26, 1993, sometime after 3:40 a.m., Boston Police were called to assist an officer at the Walgreens Drugstore located at 970 American Legion Highway. There, police observed Detective John Mulligan, who was on a paid security detail, seated in the driver's seat of his 1993 Ford Explorer. He was dead at the scene as a result of being shot fives time in the head. Police noted that his sweater had been pulled up and his department issued firearm was missing.

[2] Defendant was given jail credit for 625 days on 001, 003, 004, and 005 but was not given jail credit on 002.

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Earlier, at approximately 2:45 or 3:00 a.m., Sean Ellis, Terry Patterson, and Celine Kirk were seen at Walgreens in Patterson's brown Volkswagen. At 3:05 a.m., a bystander observed Mulligan asleep in the Walgreens parking lot and Ellis was crouched beside Mulligan's truck. After making eye contact with Ellis, she entered the store with her husband where she remained for approximately 20 minutes. Upon exiting, she saw Ellis with Patterson near the public telephones outside of Walgreens. A second witness confirmed Ellis's presence near the telephones and a third witness observed Patterson's brown Volkswagen speeding away from the sidewalk at 3:35 a.m.

On October 5, 1993, the same bystander viewed a photo array of possible suspects and identified someone other than Ellis. After a short break, she was again shown an array and this time identified Ellis as being the man she saw crouched behind Mulligan's vehicle. On October 18, 1993, she chose Ellis from a police lineup.

On September 30, 1993, Ellis was questioned by police. He admitted to being at Walgreens on the date of the shooting at 2:45 or 3:00 a.m. He claimed to have entered the store, purchased diapers for his cousin, Tracy Brown, and used the public telephone. He denied any involvement in the murder. However, Ellis's girlfriend reported that after Mulligan was killed, she retrieved from her apartment, a bag containing 2 guns, specifically a black 9 mm Glock and a silver .25 caliber Raven handgun, before hiding them in a nearby field. On October 7, 1993, the guns were found and it was revealed that the 9 mm Glock was Mulligan's department issued firearm. Both firearms had been used to kill Mulligan. Patterson's fingerprints were recovered on the driver's side of Mulligan's truck.

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On September 14, 1995, Ellis was convicted after a jury trial of first degree murder and armed robbery. He appealed his conviction and on December 6, 2000, the Supreme Judicial Court affirmed the judgment against him. *Commonwealth v. Ellis*, 432 Mass. 746, 765 (2000)(R.47-77)[3]

On May 13, 2013, Ellis filed a motion for a new trial arguing the existence of newly discovered evidence, as well as allegations that the Commonwealth had failed to disclose exculpatory evidence to him. The motion judge allowed Ellis's request for further discovery. After an evidentiary hearing that focused on three issues, i.e., the alleged inadequacies in the investigation, the involvement of corrupt detectives in the investigation, and the discovery that was subsequently provided to the defendant's appellate counsel pursuant to the defendant's motion, his motion for new trial was allowed.

The SJC affirmed the decision of the lower court. In doing so, the court identified various categories of evidence the motion judge concluded were newly discovered:

1) Martin Theft. On September 9, 2003, Detectives Robinson, Acerra, Beers, and Marquardt stole $26,000 from Robert Martin when he was stopped for suspected drug distribution. On such date, Accera identified himself as an "INS" officer, giving a false name to Martin. Detectives confiscated 7 pounds of marijuana in his vehicle and served him with a search warrant for his apartment. Robinson told Martin to open a safe in his apartment and Martin complied. The safe contained 22 additional pounds of marijuana. Martin was then told to open a safe in a second apartment. When Martin asked Marquardt if detectives would release his roommates and friends, who were present in the apartment when it was searched, Marquardt told him that although police had found $8,000 in a filing cabinet in the first apartment, his friends would be released only if police found more money in the safe in the second apartment. Martin opened the safe, Acerra removed $18,000 to $20,000, and Martin's roommate and friends were released. The police report documenting the execution of the search warranted declared that several pounds of marijuana and drug paraphernalia were seized but failed to report the seizure of any money.

2) FBI Informant Reports. An FBI informant had "intimate knowledge" that Mulligan blackmailed people, "committed murder as a cop," and regularly shook down pimps, dealers, bar owners, stores, and prostitutes for money. The reports also revealed that he "liked" young black girls and was the subject of a Federal investigation as early as 1986.

[3] Exhibits are attached hereto and shall be referred to numerically as ("R. ").

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3) Foley Allegation. Detective Foley, who investigated the Mulligan murder relayed to several detectives on September 30, 1993 that a month earlier, he was investigating threats made against Raymond Armstead, Jr., a correctional officer, and that Armstead, Jr. told Foley that that his father had a "beef" with Mulligan because Mulligan would not "leave [Armstead, Jr.'s] fourteen year old sister alone." Armstead, Jr. told Foley that his father was going to kill Mulligan and knew Mulligan worked a detail at Walgreens that day, sleeping in his vehicle during it. Armstead, Jr. told Foley that he would "read about it in the papers" that Mulligan had been "[s]hot between the eyes at Walgreens." When other detectives (Keeler and O'Leary) spoke with Armstead, Jr. about his statements, he denied making them. As a result, police determined that Foley had supplied false informant on the matter, that he was suffering from severe emotional depression, and he was relieved from duty. He subsequently treated at a hospital and a psychological evaluation cleared him to return to work.

4) Drug Dealer Robbery. An ACD report dated November 17, 1993 revealed that an anonymous tipster had reported that 18 months earlier, Mulligan and Robinson had robbed 2 drug dealers of a large sum of money at gunpoint.

5) Hansen Report. Interview notes with Ronald Hansen on May 9, 1996 confirmed that Robinson was using Hansen and his ex-wife as informants, that the ex-wife had known Mulligan since she was 17 years old, and that he "used to take young girls for rides in his car." With respect to the murder, Hansen reported that Mulligan "took drugs from the girlfriend of one of the killers and told her if her boyfriend wanted the drugs back he would have to come and see [Mulligan] or he'd arrest her." He also said that "[o]ne of the girls killed in Mattapan was the girlfriend," referring to Brown or Kirk. According to the ex-wife, Mulligan carried a .25 caliber gun on his ankle.

6) Hotline Tips. The same day as the shooing, there were tips provided to Boston police on a hotline. One such tip noted a call from a detective who said that his brother, who was a guard at South Bay, told him that an inmate William Bell told his brother that a drug dealer named Armstead had a contract out on Mulligan. Another tip was from a cab driver who drove Mulligan's girlfriend to the parking lot on the night of the murder where she shot him with a .25 caliber gun the victim had given her for self-defense. There were two tips that a "Royce Hill" was an accomplice to the shooting. Finally, there were three separate tips that someone at the Essex County Hose of Correction had information regarding Mulligan's murder. Although the tips were purportedly given to police to investigate, there was no record of such other than one that had been assigned to Marquardt and Accera.

Of this new evidence, the motion judge found that Brazil, Acerra, and Robinson had a personal interest in solving Mulligan's murder as quickly as possible to cover their own corruption scheme and to conceal that Mulligan may have rubbed people the wrong way or may have been a 'dirty cop.' She also found that these detectives failed to "vigorously pursue other leads." *Id.* at 470. The court found the newly discovered evidence also would have supported a powerful

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Bowden defense with respect to the detectives' failure to investigate. After losing in the SJC, the Commonwealth decided not to retry Ellis for the murder of Det Mulligan, purportedly after carefully considering its chances of success at a retrial in light of the newly discovered evidence.[4]

B. Commonwealth v. Craig Hood – the murders of Tracy Brown and Celine Kirk

On September 29, 1993, a call was received by a telephone operator from a small child crying. As a result, police were dispatched to 4 Oakcrest Road, Apartment No. 23 in Mattapan. Upon arrival, police found Ma'trez Brown, who was 2½ years old, along with his 10 month old baby sister, Sasha, who was asleep in her crib. Tracy Brown, the children's mother, was found dead on the floor with gunshot wounds to her head and arm caused by a single bullet. Brown's sister, Celine Kirk, was dead from two gunshot wounds to the head.

In the days following the murders, the police interviewed several witnesses, including Nikki Coleman, a close girlfriend of Kirk. She informed police that on the afternoon of the murders, she had a telephone conversation with Kirk sometime between 2:00 p.m. and 4:00 p.m. During that call, she could hear the voice of a man in the background who Kirk told her was the defendant. Coleman was able to identify the defendant's voice, as she had known him for a number of months. According to Coleman, she heard an argument between Kirk and the defendant about a gold chain that the defendant had lent Kirk six weeks earlier. Coleman contended that in the weeks after Kirk borrowed the chain, the defendant asked for its return but Kirk either refused or

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[4] Patterson was convicted of murder in the first degree, armed robbery, and possession of a dangerous weapon in a separate trial but his convictions were reversed on appeal due to a conflict of interest with respect to his trial attorney, and his case was remanded for a new trial. Commonwealth v. Patterson, 432 Mass 767 (2002). At the retrial, the defendant was convicted and again appealed, this time claiming that the opinion by the Commonwealth's fingerprint expert was not admissible. The SJC agreed and remanded the case back to the trial court. Patterson then pled guilty to the lesser included crime of manslaughter and was sentenced to time served. See Ellis, *supra* at 481 [fn 8].

neglected to return it. During the argument, Kirk offered to give the chain back to the defendant. At one point, they were disconnected and Kirk later told her that the defendant had ripped the phone out of the wall.[5] At the end of Coleman's conversation with Kirk, she heard the defendant say, "I'm leaving, I'll get [the chain] later." When Coleman subsequently spoke with police, she did not know the defendant's last name, but was able to show them where he resided in Brockton. She later identified him from a photograph as being the person she heard in the background on the phone who lent Kirk his chain.

Coleman also provided information about another potential suspect. Specifically, she reported to police that she had previously informed Kirk that Dana Jones, Kirk's ex-boyfriend, was out of jail and had told two women that he was going to kill her for sending him to jail.

Police learned the defendant had several warrants against him, one of which was for a prior shooting that occurred on June 15, 1993 near Norfolk Park. On that day, there was a confrontation between the victim, Glenn McLaughlin, and the defendant over accusations by the defendant that McLaughlin set him up to be robbed. When McLaughlin refused to leave the area pursuant to the defendant's request, the defendant shot him once through the leg with a .25 caliber handgun in the presence of several witnesses.

The bullet recovered from the McLaughlin shooting was compared with the three bullets that were removed from Kirk and Brown during their autopsies. It was determined that all four were fired from the same gun.

The defendant was arrested on the McLaughlin warrant and, while being detained, requested to speak with police. It was then that he confessed to the murders of Brown and Kirk.

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[5] The Boston Police Department sent the telephone to the laboratory for latent fingerprint processing but the results remain unknown (R.43).

According to the defendant, he and Kirk were arguing about the chain, she refused to return it, and then tried to escort him to the door. In response, he shot her twice in the head. When Brown heard the noise, she fled into her bedroom, and the defendant followed, shooting her twice in the head because she was a witness to the Kirk shooting. The defendant claimed he originally found the murder weapon the on the train tracks behind a fence at Norfolk Park and, after shooting Kirk and Brown, returned the weapon to the same place. Although police searched that area, no weapon was ever found.

The defendant had a history of mental illness that was significant enough to warrant hospitalization in 1991, four years before he pled guilty. According to his medical records, he tested in the "mildly impaired range," experienced brief psychotic episodes, and bizarre and disorganized thinking, which was considered to be a preliminary phase to a more extended schizophrenia illness. Medical records depicted that he had witnessed his mother being drowned by his father at age six and, prior to her death, was told by her that he should not tell on other people. While the defendant was deemed competent for trial, and there was no criminal responsibility defense raised prior to the plea, his mental health issues undoubtedly played some part in his decision to voluntarily confess to the crime. In fact, during his interrogation, he told police about the "voices" he had heard in his head for several years, confirming that these same voices were speaking to him immediately after the shooting.

C. *The connection between the murders of Tracy Brown, Celine Kirk, and Detective John Mulligan*

Celine Kirk and Tracy Brown were Ellis's cousins. Ellis was living at the residence of Kirk and Brown at the time they were killed. Kirk was present with Ellis and Patterson on September 26, 1993 when Mulligan was murdered in the Walgreens parking lot. Three days later, on September 29, 1993, Brown and Kirk were murdered in Brown's apartment. Because Kirk was a

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witness to the Mulligan murder, there was motive and opportunity for Ellis and Patterson to kill her.

On September 30, 1993, when Ellis was interrogated by police, he was a suspect in all three murders.[6] He admitted that he had been living at Brown's apartment with his cousins at the time of their death. He claimed he initially learned of the double homicide on his way home when he saw police, news media, and EMT's at the apartment. According to Ellis, he didn't speak with police on scene because he had outstanding warrants and didn't want to "bring attention to himself." He admitted only to being at the Walgreens with Kirk and Patterson on the evening of Mulligan's murder to buy pampers for Brown, returning to Brown's house thereafter. At some point during questioning, Ellis became agitated and refused to cooperate any further with police.

During a discussion with an individual named Joseph Matthews, Ellis told him that Kirk's boyfriend – Kurt Headen – had killed Kirk in an argument. According to Ellis, when Brown saw Kirk shot by Headen, she jumped in and stabbed Headen. Headen then killed Brown.

On October 5, 1993, Andrew Tabb, a Boston Police Cadet, reported knowledge of a brown Volkswagen that belonged to a gang member known to him as "Terry Hood." He was privy to a conversation with two gang members who discussed seeing the brown Volkswagen being towed by police. When asked if "Terry" was responsible for Mulligan's death, they said that "Terry" may not have done the shooting but may know where the gun was located. These gang members said that "Terry's" plan was to flee Massachusetts but he didn't have enough money to do it. They speculated that the double murder on Oakcrest Road was related to the Mulligan case and that

[6] Detectives told him, "You're here because of the murder of your cousins, Celine Kirk and Tracy Brown, and the murder of a Boston Police Officer Detective John Mulligan!"(R.7)

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Terry may have wanted the chain to exchange it for money to flee the state. Tabb subsequently viewed a photo array and identified the person he knew to be "Terry Hood" as Terry Patterson.

Nikki Coleman confirmed Patterson drove a brown Volkswagen. She also confirmed Kirk was with Ellis on the night of the murder and that she and Kirk discussed it thereafter. Kirk told her that she was there when Mulligan was killed and that he was shot between the eyes three times, but never told Coleman who did it. Two days later, when Kirk was dead, Coleman wondered why Kirk was killed and, after "started getting some of the facts," believed the death had to do with the Mulligan shooting. Coleman confirmed that Ellis was present at the defendant's arraignment.

In the immediate aftermath of the Kirk/Brown shooting, when asked who killed his mother, Ma'Trez said, "Daddy (Andre Mark) did it."[7] A day later, he was interviewed by a child psychologist at the District Attorney's Office. When asked who shot his mother, he said "Sean" (Ellis). Approximately one week later, on November 17, 1993, Ma'Trez was playing with a toy that had two clapping hands operated by a trigger and spontaneously said to his aunt, "Bang, bang. 'Terry' shot Mommy. He got in his car and drove away." Ma'Trez was never shown a photograph of the defendant for identification purposes.

It was reported by one officer that Mulligan had taken drugs from Brown or Kirk, telling her that if her boyfriend wanted the drugs back, he would have to come and see Mulligan or she would be arrested. Mulligan was also known to carry a 25 caliber gun on his ankle, the same caliber that was used to kill Brown and Kirk and was never found.

The same task force that investigated the Mulligan shooting was assigned to investigate the Kirk/Brown shooting. When police executed the warrant at Brown's residence, they were seeking evidence of both crimes. The affidavit in support thereof clearly states "It is the opinion

[7] There was evidence that he often called many people "Daddy."

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of this affiant and the collective opinion of others involved in this investigation, that...(the search) will produce evidence relative to the investigations into the murders of Tracy Brown, Celine Kirk, and John Mulligan." (R.25-29). Upon executing it, they found two live .25 caliber bullets, the same caliber used to kill Brown and Kirk, among a Massachusetts identification card in Ellis' name (R. 25-29).

D. Pre-Trial Motion for Discovery filed by Defendant's trial counsel

The defendant was represented at the trial level by Stephen Weymouth. Throughout his representation, he pursued discovery motions and engaged in conversation with the Commonwealth in an effort to obtain a third party culprit defense at trial. Specifically, he sought information that would enable him to present evidence that whoever murdered Mulligan also murdered Kirk and Brown.

Weymouth sought all discovery pertaining to Ellis and his codefendant, Patterson, including "all information and evidence that would show that these two individuals were present at or near the apartment of Celine Kirk and Tracy Brown, 4 Oakcrest, Apartment 23, Mattapan, Massachusetts during the period of time between September 26, 1993 and thereafter." He requested any and all field investigation observations made by Boston Police Officers of the defendant, Ellis, and Patterson during the period of time between September 26, 1993 and September 29, 1993 and thereafter, as well as all police reports relating to the events which resulted in the indictment of Ellis and Patterson for the murder of Mulligan.

The court allowed Weymouth to review the discovery material in the *Ellis* and *Patterson* cases, but he was inexplicably precluded from sharing it with or allowing the defendant to be privy to the materials. Weymouth confirms via his affidavit that after he reviewed the *Ellis/Patterson*

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discovery, he advised the defendant to enter guilty pleas without ever sharing the information contained therein (R.78-83).

II. ARGUMENT

A. Newly discovered evidence, unknown to the defendant at the time of trial, which is both material and credible, has arisen which casts real doubt on the justice of the defendant's conviction.

1. The Boston police task force, which included the same detectives who were later determined in the *Ellis* case to be corrupt, also investigated the death of Kirk and Brown.

The close proximity in time between the three homicides, and the fact that many of the same individuals were involved or interviewed, led police to investigate all the homicides simultaneously by the same task force.[8] As such, the very same detectives that were found to be corrupt and acting in a self-serving manner in *Ellis*, i.e., Det. Brazil and Det. Marquardt, were "directly involved in the investigation and prosecution of the defendant." *See Commonwealth v. Ellis*, 475 Mass. 459, 464 (2016).

Detective Brazil was not charged formally with any criminal wrongdoing only because he was granted immunity. He did, however, admit his involvement in the corruption surrounding the Mulligan homicide. Additionally, although the motion judge in *Ellis* implicated Marquardt as one of the detectives involved in the 'Martin theft,' for reasons unknown, he was not formally charged. Here, Marquardt was the sergeant in charge of the defendant's investigation and Brazil was the detective responsible for conducting the majority of witness interviews; his partner, Mahoney, along with Detective O'Leary, interrogated the defendant. Brazil and Marquardt were among the

[8] According to a report from Det. Brazil, "the task force which was formed to investigate the murder of Det. John Mulligan was now being utilized in the investigation of the murder of Celine Kirk and Tracy Brown." (R.16).

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first on scene after the double homicide, and were responsible for securing the area, investigating the scene, and interviewing witnesses on location (R.12,30-31). Likewise, Detectives Keeler and O'Leary were also an integral part of the investigation in this case (R.30-31). It was Keeler and O'Leary who allegedly interviewed the tipster pursuant to the "Foley Allegation" in *Ellis*, who allegedly changed his statement during their interview; all of the contents of which were never produced to defense counsel in *Ellis*. As such, the same concerns, and ulterior motives of which both the trial court and the SJC had in the *Ellis* case are applicable here. These detectives "had a personal interest in solving [the victim's] homicide as quickly as possible before any members of the ... [t]ask [f]orce, who were not part of the corruption scheme, or anyone else, could look further" into the case." *Id.* at 471-472. This led to the possibility that these corrupt detectives "compromised potential evidence of the identity of [the victim's] killer while attempting to conceal evidence of their own wrongdoing." *Id.* at 471-472. Indeed, one would be hard pressed to differentiate why *Ellis* was afforded a new trial and this defendant should not be.

Because this information was not available to the defense at the time of trial, it qualifies as 'newly discovered.' Contrast *Commonwealth v. Shuman*, 445 Mass. 268, 272 (2005) ("evidence does not meet the test for 'newly discovered' evidence [if] it was available prior to trial"). Here, as was the case in *Ellis*, this newly discovered evidence could have "further supported a powerful Bowden defense by revealing that the Commonwealth failed to investigate numerous other parties with reason to kill [the victims]." *Id.* Undeniably, the conflict of interest of certain detectives assigned to investigate all three homicides, and "'the Boston police department's 'failure to follow up on leads implicating third-party suspects is material, credible, and would have been a real factor in the jury's deliberations,' such that 'this is a case where justice has not been done.'" *Id.* at 472.

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Not only was the task force for all three homicides the same, but the interrelatedness of the two cases and their key players is also readily apparent. Ellis was actively involved in both cases, as was Kirk, who was a witness to one homicide and a victim in the other. Furthermore, Mulligan was connected to Kirk, as at one time, he confiscated drugs from her and refused to give them back until she effectuated a meeting between Mulligan and her then boyfriend. Based on the newly discovered evidence, and the fact that defendant's case parallels the *Ellis* case in many ways, including the fact that the same detectives investigating both crimes concurrently were found to be acting in a self-serving and corrupt manner, the defendant should be granted a retrial, just as *Ellis* was granted a retrial.

Defendants have the right to base their defense on the failure of police to adequately investigate a murder in order to raise the issue of reasonable doubt as to the defendant's guilt. *Commonwealth v. Bowden*, 379 Mass. 472, 486 (1980); *see Commonwealth v. Reynolds*, 429 Mass. 388, 391 (1999); *Commonwealth v. Person*, 400 Mass. 136, 140 (1987). "[T]he inference that may be drawn from an inadequate police investigation is that the evidence at trial may be inadequate or unreliable because the police failed to . . . pursue leads that a reasonable police investigation would have . . . investigated, and ... [this] investigation reasonably may have led to significant evidence of the defendant's guilt or innocence." *Commonwealth v. Alcantara*, 471 Mass. 550, 561 (2015); *see Commonwealth v. Wood*, 469 Mass. 266, 277 (2014).

The investigation in this case was clearly clouded by the same motives that were offensive enough to the court in the *Ellis* case to warrant a retrial. Although this defendant pled guilty, rather than go to trial, his decision to plead guilty was nonetheless not informed by the newly discovered evidence. Furthermore, that the defendant tendered a guilty plea does not end the analysis, as it is well-recognized that there are many reasons why a defendant may choose to tender a plea, waiving

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his constitutional right to a trial. It is very easy to understand why this defendant would choose to plead guilty to two counts of second degree murder, even with consecutive life sentences, instead of taking the chance at trial that he would be convicted of first degree murder with no opportunity for parole.

Likewise, that the defendant confessed to the crime is also not dispositive. The phenomenon of false confessions is widely known and commonly understood. There are a variety of reasons why an individual innocent of a crime may confess, including but not limited coercive police tactics (promises, leading questions, misstatements about the strength of the evidence), and the youth or presence of mental illness of the individual being interrogated. In fact, some studies report that more than one out of every four individuals exonerated by DNA evidence involved a confession.[9] See *Commonwealth v. Scoggins*, 439 Mass. 571, 576-577 (2003)(The courts are mindful of "the possibility that an innocent defendant, confronted with apparently irrefutable (but false) evidence of his guilt, might rationally conclude that he was about to be wrongfully convicted and give a false confession in an effort to salvage the situation."). Here, the defendant did suffer from mental illness.

Considering the defendant's confession in this case, there were various inconsistencies that should have spurred the officers to investigate more fully. For example, three bullets were removed from the victims' bodies; the defendant's statement to police referenced shooting both victims twice (R.11,38-40). The forensic report showed that Kirk, the first victim, was shot in the temple areas of each side of her head; the defendant told police that he had shot her in the back of her head (R.84). Blood and hair evidence at the scene was found in the opposite direction of which the

[9] https://www.aljazeera.com/programmes/witness/2019/03/false-confessions-innocent-people-confess-crime-190311093100363.html

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defendant claimed to have left the building. The defendant told police that after the shooting, he went to his girlfriend's house, Nicole Johnson, and asked her to drive him to Norfolk Park, where he discarded the gun (R.87-89). According to Nicole Johnson, the defendant never asked him to take her anyway, nor was she aware that the defendant discarded any gun (R.10). When pressed to divulge how he obtained the murder weapons, he claimed he found it on some train tracks behind a fence in Norfolk Park (R.87-89). Although he claimed to have returning it to the same location after the shooting, a subsequent search of the same yielded negative results. Furthermore, the defendant told police he shot one of the women in the bedroom and one at the front door in the living room, and immediately fled out of their apartment (R.38-40). Photographs taken by police on scene show evidence of blood on the toilet seat (R.37), near the drain in the bathtub (R.36), and covering a mop in the corner (R.35), all of which support the inference that someone attempted to clean either his own person, or the crime scene. While the defendant told police he shot the girls because Kirk refused to give him back his gold chain after he lent it to her, Coleman told grand jurors that Kirk had invited him over "about three, four times....to come get the chain." (R.1-6). Even on the day she was shot, Coleman overheard Kirk and the defendant talking about the chain, and Kirk repeatedly asked him to stay so she could give it back to him but he casually responded, "No. No. I'll come back and get it." (R.1-6). As such, a claim that the defendant was angry enough about a gold chain that he would commit murder over it seems entirely farfetched.

Also notable is the fact police inexplicably failed to record the defendant's first statement, instead opting to record only his subsequent statement, after he had 'worked out' all the details in his original statement. This second recorded confession consisted entirely of leading questions by police to a defendant who had significant well-documented mental health issues, and even during the interrogation, referenced hearing "voices" for several years. Finally, the recorded statement

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supports that police promised the defendant he would be able to see his son if he gave them a statement, and that his failure to do so would result in him being deprived permanently from the same.[10] *Commonwealth v. Monroe*, 472 Mass. 461 (2015)(suppression warranted where police used psychologically coercive tactics such as threatening defendant's ability to maintain contact with infant daughter, minimizing the crime by offering explanations as to why he may have committed it, and misrepresenting the result of DNA that had not yet been tested).

While police have no constitutional duty to perform any particular test or follow up on any lead, certainly with such flagrant disregard for these clear inconsistencies, the inference can be drawn that follow up on those leads may have been exculpatory. *See Ariz. v. Youngblood*, 488 U.S. 51 (1988) (while police have no constitutional duty to perform any particular test, defense may argue to jury that a particular test may have been exculpatory); *see also Person*, 400 Mass. at 140; *Commonwealth v. Gilmore*, 399 Mass. 741, 745 (1987); *Bowden*, 379 Mass. at 485-86. Indeed, "a jury may find a reasonable doubt if they conclude that the investigation was careless, incomplete, or so focused on the defendant that it ignored leads that may have suggested other culprits." *Commonwealth v. Silva-Santiago*, 453 Mass. 782, 801 (2009).

There are guidelines this court must follow in considering newly discovered evidence. "Not only must the allegedly new evidence demonstrate the materiality, weight, and significance . . . but it must also have been unknown to the defendant or his counsel and not reasonably discoverable by them at the time of trial (or at the time of the presentation of an earlier motion for a new trial)." *Commonwealth v. Grace*, 397 Mass. 303, 306 (1986). *See also Commonwealth v.*

[10] At the conclusion of the interrogation, the defendant immediately asked the officers to "see what they could do" referencing their promise to get his twelve month old baby in so he could see him. Mahoney noted that the defendant "got quite emotional on when [the defendant] thought about, what [they were] speaking about, the possibilities of not seeing him." Mahoney admitted that he "promised" he would get the defendant's son there for him that evening (R.85-86).

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Brown, 378 Mass. 165 171-172 (1979). Here, there is no doubt that the evidence is material and significant because it directly calls into question the integrity and propriety of the investigation.

In a motion for new trial based upon newly discovered evidence, the new evidence must strongly support the defendant's position and be not merely cumulative of that offered at trial, but different in kind. *Grace*, supra at 303. *See also Commonwealth v. Ellison*, 376 Mass. 1, 19-20 (1978) (circumstantial evidence gave strong support to sworn recantation of key witnesses exculpating defendant). The newly discovered evidence in this case is not merely cumulative of the evidence that would have been presented by the Commonwealth at a trial, but instead is both original and completely at odds with the same. Because this same evidence was enough to warrant a retrial in *Ellis*, it simply cannot be ignored.

2. **Defense counsel was never privy to important third party culprit evidence from the *Ellis* case nor was the defendant at the time he tendered his plea. The Commonwealth's failure to turn over such exculpatory evidence was in violation of *Brady v. Maryland*, 373 U.S. 83 (1963).**

Because defense counsel suspected that all three homicides may be connected, he obtained a judicial order allowing him to review all discovery documents in the *Ellis/Patterson* files. Despite this order, defense counsel was never given access to all information in the files, some of which was exculpatory in nature. This missing evidence includes the following:

a. witness statements that stated that Sean Ellis entered the scene of the crime in this matter, after the murders and removed a firearm (R.44-46);

b. Officer Andrew Tabb reported knowledge of a brown Volkswagen that belonged to a gang member known to him as "Terry Hood." He was privy to a conversation with two gang members who discussed seeing the brown Volkswagen being towed by police. When asked if "Terry" was responsible for Mulligan's death, they said that "Terry" may not have done the shooting but may know where the gun was located. These gang members said that "Terry's" plan was to flee Massachusetts but he didn't have enough money to do it. They speculated that the double murder on Oakcrest Road was related to the Mulligan case and that Terry may have wanted the chain to exchange it for money to flee the state. Tabb subsequently viewed a

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photo array and identified the person he knew to be "Terry Hood" as Terry Patterson; (R.14)

c. Detective Brazil subsequently stated that he came to discover that this witness was referring to two different people, Terry Patterson and Craig Hood (R. 14);

d. none of the information or evidence referenced in the SJC's decision in the *Ellis* matter (6 items), specifically, the corruption of the task force, and the tips received in the Mulligan investigation (R.47-77);

e. that subsequent to the Kirk/Brown murders, Detective Brazil met with David Murray, the uncle of Kirk, Brown, and Ellis, who told Brazil that Ellis had told him that a man named, "Craig Patterson" may be involved in the double homicide (R.44-46);

f. David Murray's statements to Brazil that he believed Ellis may have been involved in the double homicide, may have dialed the phone for Tre' Maz, and may have panicked at the scene (R.44-46);

g. that Ellis's girlfriend, Tia, had been threatened by three different individuals, one of whom included Patterson's girlfriend to "keep her mouth shut" about the Mulligan murder (R.19-24);

h. that prior to her death, Coleman told her ex-boyfriend, Dana Jones, had told some girls that he was going to kill for putting him in jail;

i. that Kirk told her friend, Prentice Douglas, that she was afraid to go back to her apartment because she was a witness in the Mulligan murder (R.17);

j. that Ellis told his girlfriend, Kia, that prior to her death, Kirk was beaten badly and "pistol whipped;" (R.41) and

k. that Ellis told Joseph Matthews that it was Kurt Headen, Kirk's boyfriend who killed the women, during which Headen was stabbed by Brown when she tried to defend Kirk (R.32-34).

Defense counsel confirms that, "had [he] been furnished with the discovery facts disclosed by the [Ellis] decisions and which was not included in the *Ellis/Patterson* discovery materials that [he] was allowed to review, [he] would not have advised the defendant to enter guilty pleas in exchange for consecutive life sentences for the murder sin the second degree of Kirk and Brown.

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Based on the facts now known to [him, he] would have advised the defendant to proceed to a jury trial and presented a third-party culprit defense." (R.78-83).

The above evidence, with the exception of some of the items in subsection (d), was material information in the possession of the prosecutor or those police who participated in the investigation, was information that tended to exculpate the defendant, and was not disclosed by the prosecutor to defense counsel despite a valid court order. This was a clear *Brady* violation. See *Brady v. Maryland*, 373 U.S. 83 (1963); *Commonwealth v. Caillot*, 454 Mass. 245, 261–262 (2009) ("To establish a Brady violation, a defendant must show that [1] material information was in the possession of the prosecutor or 'those police who are participants in the investigation and presentation of the case,' ...; [2] the information tended to exculpate him; and (3) the prosecutor failed to disclose the evidence"). Not only was the defense handicapped from mounting a complete defense that included a third-party culprit, but defense counsel's advice to the defendant regarding his guilty plea was not informed when made. *Commonwealth v. Berrios*, 64 Mass. App. Ct. 541 (2005)("A plea based on advice that is uninformed by adequate investigation of the facts is not knowing or intelligent if adequate investigation would have revealed facts that would have affected the defendant's decision to plead.").

That this information was not disclosed to defense counsel or his client is hardly surprising considering the apparent disorganization of the Commonwealth's files. The compilation of police logs, police reports, search warrants, witness statements and other documents do not appear in both case files despite that they are all related (R.8-9,14,16,25). For instance, some of the reports/files are labeled "Celine Kirk, Tracy Brown, John Mulligan," while others are labeled as either "Celine Kirk/Tracy Brown" or "John Mulligan." This supports the very real likelihood that reports that

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contained information relevant to this defendant but labeled only as "John Mulligan," either never made it to the defendant's file or were never disclosed to him or his attorney.[11]

In *Ellis*, both the disorganization and failure to produce evidence was adjudicated and addressed by the court. In *Ellis*, Det. O'Leary (who also investigated this case) testified that he numbered and indexed all police reports filed in the investigation before turning them over to the prosecutor. *Id.* at 473. Although the prosecutor testified that her practice was to disclose "everything," the motion judge credited the defendant's trial attorneys who denied receiving everything. The evidentiary hearing proved the Commonwealth's evidence was not as orderly as it appeared, specifically, errors were made with respect to numbering and indexing of the investigation files. *Id.* at 473-474.

In affirming the motion judge's findings, the SJC noted the following:

"The defendant introduced two version of the indices of police reports related to the investigation, which contain the same documents numbered somewhat differently. The defendant also introduced several transmittal letters that enclosed discovery sent by the prosecutor to the defendant's trial counsel. These discovery letters showed that some documents that were disclosed to the defendant were not referenced by number, that those documents that were referred to by number were not disclosed sequentially -- one letter enclosed seven documents including one document numbered 138 and one document numbered 197 -- and that at least one of the documents referred to by number in a discovery letter did not correspond to the prosecutor's numbered index, which she claims listed all of the documents disclosed to the defense." *Id.*

The undisclosed evidence consisted of third party evidence. In seeking to introduce evidence that another person committed the crime with which he is charged, the defendant must

[11] For example, an interview with Harriet Griffith conducted on October 15, 1993, which references the defendant, is labeled not "Tracy/Brown/Celine Kirk Investigation," but instead, "Detective John Mulligan Investigation: Interview of Harriet Griffith relative to phone calls received from Robert Matthew's cellular phone" (R.8). The statement by Cadet Tabb that misidentifies Craig Patterson as "Terry Hood" is also labeled "John J. Mulligan" (R.14). Likewise, the statement by Kirk to Prentiss Douglas about her fear of returning to her apartment after witnessing the murder is labeled "John J. Mulligan" (R.17). Finally, the interview of Joseph Matthews that contains a statement by Ellis alleging that Kirk's boyfriend committed the murder and was stabbed during the altercation, is also labeled as "John Mulligan." (R.32-34).

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show that the acts of the other person are so closely connected in point of time and method of operation to the crime charged as to cast doubt upon the identification of the defendant as the person who committed the crime. *See Commonwealth v. Hunter*, 426 Mass. 715, 716-17 (1998); *Commonwealth v. Keizer*, 377 Mass. 264, 267 (1979); *see also Commonwealth v. Phinney*, 446 Mass. 155, 163-65 (2006). There must be a connection between the purported third-party culprit and the crime under consideration, not more speculation. *See United States v. Patrick*, 248 F.3d 11, 21 (1st Cir. 2001); *Doe v. Sex Offender Registry Bd.*, 450 Mass. 780, 811 (2008). The proffered evidence "must have a rational tendency to prove the issue the defense raises, and the evidence cannot be too remote or speculative." *Wood*, 469 Mass. at 275.

There is no doubt that the acts of another person(s) were so closely connected in point of time and method of operation to the crime charged so as to cast doubt upon the identification of the defendant as the person who committed the crime. For instance, Kirk's former boyfriend, Jones, had recently threatened to kill Kirk because he blamed her for putting him in jail. Likewise, there was also evidence that Patterson was a viable suspect since he was identified by Ma'Trez as the shooter, and was identified by witnesses, one of whom was a police officer, as potentially being involved in the death of Kirk and Brown. Niether the defendant nor his attorney were aware of the above. They were also not privy to the fact that Ellis' girlfriend, Letia Walker was threatened by Robert Matthews, by an individual known to her only as "Ray Ray," and by Patterson's baby's mother to "keep her mouth shut" about the Mulligan murder or they would kill her (R.19-24). This obviously supports Patterson's motive to kill Kirk.

There is also substantive exculpatory evidence that implicates Sean Ellis. First, neither the defendant nor his attorney were aware of the statements by a then confidential informant, David Murray, the uncle of Ellis, who told police that he had discussed the double homicide with Det.

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Brazil "numerous times." (R.44-46). According to Murray, Ellis may not have been responsible for the double homicide but he was "aware of it" or "a part of it." (R.44-46). He told Brazil, "I strongly feel [Ellis] was the person that pressed the operator for that boy to talk about this incident....the baby, later on that night, was asked 'Do you know what happened at your mommy's house?' and [Ellis's] name came up." (R.44-46). It was Murray's opinion that Ellis arrived on scene shortly thereafter, panicked, grabbed his clothes, and dialed the phone for Tre' Maz (R.44-46). Ellis initially rebuffed Murray's direct inquiry about the crime but subsequently admitted that he returned to the scene of the crime and removed a gun he had previously hidden (R.44-46). Upon Ellis's release, he was curiously eager to speak with Coleman about Kirk, the defendant, and the gold chain (R.44-46). He also told Murray that the argument between Kirk and the defendant was about the gold chain and about "her keeping her mouth shut...about the murder of the police officer." (R.44-46). Coincidentally, Ellis was also seen wearing the same gold chain that supposedly motivated the double homicide (R.13). In fact, the day after his cousins' deaths, Ellis admitted to police that he was in possession of the chain (R.9).

Second, Ellis had significant motive to eliminate witnesses of the Mulligan shooting. Kirk was present with Ellis and Patterson on September 26, 1993 when Mulligan was murdered in the Walgreens parking lot. Three days later, on September 29, 1993, Brown and Kirk were murdered in Brown's apartment, after Kirk had told an individual named Prentice Douglas that she was afraid to go back to her apartment because of what she had witnessed.

Third, there is evidence that either Ellis was present during the double homicide by providing intricate details, or intended to deflect suspicion from himself by attempting several times to falsely implicate a third party for the crime. Ellis told his girlfriend, Tia, that prior to the time she was shot, Kirk was "beaten very bad in the face with a gun" and may have gotten "pistol-

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whipped." (R.41). He also told Joseph Matthews that Kirk's boyfriend – Kurt Headen - was fighting with her, and that Headen shot Kirk. Brown then jumped in and stabbed Headen, who killed her (R.32-34).

Finally, Ma'Trez, the sole witness to the crime, also identified Ellis as being the individual who shot his mother. Ma'Trez never identified the defendant by name as the shooter, nor was he ever identified in a photo array.

A defendant's third-party culprit evidence may consist of evidence that another person recently committed a similar crime by similar methods, in an effort to show that that other person also committed the particular crime with which the defendant is charged. *See Commonwealth v. Jewett*, 392 Mass. 558, 562 (1984). Both proximity in time and location and similarity in method of operation are required for this form of third-party culprit evidence to be admitted. *See Commonwealth v. Brown*, 27 Mass. App. Ct. 72, 76 (1989) ("Apart from considerations of proximity in time and location, the instant and the similar crime must share similar features or present resemblances of method..."). Here, the homicides were only days apart, the key players were the same, and the decedents all shared an intricate connection with one another. These factors are so "striking or salient" as to connect them to a single offender: Sean Ellis.

B. <u>The defendant was deprived of his Due Process Rights because his attorney was prohibited from sharing relevant evidence with the defendant that would have impacted both his decision to plead guilty and the defense strategy</u>.

The defendant was deprived of his Due Process Rights because his attorney, Stephen Weymouth, was prohibited – without explanation – from sharing relevant evidence with the defendant that would have impacted his decision to plead guilty. While the Court allowed Weymouth himself to review the discovery material in the *Ellis* and *Patterson* cases, he was

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curiously barred from sharing any of the materials with his own client. Weymouth advised the defendant to enter guilty pleas without distributing any of these pertinent materials with him.

Massachusetts courts have routinely stressed the importance of a defendant's autonomy to make decisions relating to his own defense. *See, e.g., Commonwealth v. Robidoux, 450 Mass. 144 (2007)*. Without being allowed access to this pertinent information, the defendant was denied adequate autonomy in rendering his decision as to whether or not it was in his best interest to plead guilty to two counts of second degree murder.

A defendant has an unequivocal right to participate in his own defense. See *Commonwealth v. Robidoux*, 450 Mass. 144 (2007)("We have stressed the importance of protecting a defendant's autonomy to make decisions relating to his defense."); *Commonwealth v. Federici*, 21 427 Mass. 740, 744 (1998)(Defendant entitled to reject an insanity defense against his attorney's advice); *Commonwealth v. Conley*, 43 Mass. App. Ct. 385 (1997)(new trial awarded where trial counsel was ineffective for his failure to test forensic evidence presented by Commonwealth as urged by defendant). Here, the defendant was denied the opportunity to participate in his defense by the court's inexplicable decision to prohibit defense counsel from discussing with the defendant anything he learned from his review of the *Ellis/Patterson* case. As such, a new trial is warranted.

C. **The defendant's plea was not made knowingly, intelligently and voluntarily.**

The unknown information/evidence, whether it was unknown as a result of a *Brady* violation, because the court order prohibiting defense counsel from sharing it with the defendant, or because it was newly discovered, is a factor in determining whether the defendant's plea was made voluntarily, knowingly, and intelligently at the time he made it. *See Ferrara v. United States*, 456 F.3d 278, 280 (1st Cir. 2006). A post-conviction motion to withdraw a guilty plea is treated as a motion for a new trial. *Commonwealth v. DeMarco*, 387 Mass. 481, 482 (1982); *Commonwealth v. Russin*, 420 Mass. 309, 315 (1995). "The judge is to apply the standard set out

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in rule 30 [Mass.R.Crim.P. 30(b), 378 Mass. 900 (1979)] `rigorously,' and may grant a motion to withdraw a guilty plea only if `it appears that justice may not have been done.'" *Commonwealth v. Facella*, 42 Mass. App. Ct. 354, 355 (1996), quoting *DeMarco, supra* at 486-487. A motion to withdraw a guilty plea "is addressed to the sound discretion of the judge, and the judge's disposition of the motion will not be reversed for abuse of discretion unless it is manifestly unjust, or unless the plea colloquy was infected with prejudicial constitutional error." *Commonwealth v. Correa*, 43 Mass. App. Ct. 714, 716 (1997) (citations omitted).

In a motion to withdraw a guilty plea, a defendant must provide "sufficient credible and reliable evidence to rebut a presumption that the prior conviction was valid." *Commonwealth v. Lopez*, 426 Mass. 657, 658 (1998). Once the defendant rebuts the presumption of regularity, "an evidentiary hearing may be warranted at which the burden will be on the Commonwealth to show that the defendant's plea proceedings were conducted in a way that protected his constitutional rights." *Id.* at 665.

While the defendant in *Berrios*, supra, alleged ineffective assistance of counsel for a failure to investigate, the case is similar to this defendant's case in many respects. In *Berrios*, the defendant, who was charged with accessory before the fact to murder, also confessed to the crime and, upon the advice of his attorney, pled guilty to the lesser offense of accessory before the fact to second degree murder, making him parole eligible after 15 years. *Id.* at 542. The Appeals Court affirmed the lower court's order allowing the defendant's motion to vacate guilty plea and for new trial, finding that defense counsel's advice to plead guilty was "not made on an informed view of the evidence against him, and that therefore, the defendant's plea was not knowing or intelligent." *Id.* at 551. The *Berrios* court agreed that justice may not have been done, based in large part upon

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"the perception of counsel and the defendant about the defendant's chances at trial based on their understanding of the evidence against him." *Id.* at 554.

The defendant's case is on par with the decision in *Berrios* because, at the time of his trial, he and his attorney were not aware of all of the evidence against him so he could properly weigh the risks of going to trial versus tendering a plea to two counts of second degree murder. *Commonwealth v. Moreau*, 30 Mass. App. Ct. 677 , 682-683 (1991), cert. denied, 502 U.S. 1049 (1992) (assessment of reasonableness of counsel's advice to plead guilty based on counseled confession cannot be made without knowledge about strength of Commonwealth's case). The defendant himself was also at an additional disadvantage because he was not privy to even the limited discovery his attorney viewed in the *Ellis/Patterson* case, as his attorney was strangely prohibited from sharing it with him. In light of the same, a new trial is warranted.

D. <u>Under the 'confluence of factors' analysis, the defendant is entitled to a new trial, as it is clear that justice was not done.</u>

Not only was the defendant wholly unaware of the newly discovered evidence at the time he tendered his plea, nor was he privy to the limited evidence his attorney reviewed, but under the 'confluence of factors' analysis, a new trial is warranted because justice was not done. See *Commonwealth v. Brescia*, 471 Mass. 381, 396 (2015); *Commonwealth v. Ellis*, 475 Mass. 459, 481 (2016); *Commonwealth v. Epps*, 474 Mass. 743, 767 (2016); *Commonwealth v. Rosario*, 477 Mass. 69 (2017).

Epps, established a new benchmark with respect to motions for new trial and claims of newly available evidence. There, the defendant was convicted of murder of an infant where the Commonwealth alleged she died of shaken baby syndrome. Although the defendant did consult with one expert with unfavorable results, he failed to consult with a second expert despite there being some scientific evidence at the time of trial to support the death was accidental. The SJC, in

affirming the judgment allowing the defendant's motion for new trial, acknowledged that since the time of trial, the science in this particular area had evolved with additional studies having been published. The analysis taken by the SJC was not necessarily just whether evidence was newly discoverable but instead whether evidence was newly available and whether justice was done. The SJC stated its reasons as follows:

"Therefore, we confront this dilemma: if the defendant were deprived of an available defense because counsel was ineffective, we could determine where there was substantial risk of a miscarriage of justice and, if there was, we would conclude that the interests of justice require a new trial. *See Millien*, 474 Mass. at 432 ("substantial risk of a miscarriage of justice" standard is same as prejudice standard under second prong of ineffective assistance of counsel test.). But what do we do if we determine that the defendant was deprived of a substantial defense only because, if the trial were conducted today, it would be manifestly unreasonable for counsel to fail to find and retain a credible expert given the evolution of the scientific and medical research? We conclude that our touchstone must be to do justice, and that requires us to order a new trial where there is a substantial risk of a miscarriage of justice because a defendant was deprived of a substantial defense, regardless whether the source of the deprivation is counsel's performance alone, or the inability to make use of relevant new research findings alone, or the confluence of the two. *See Epps*, *supra* at 766.

Epps was not decided until 2016, thus the SJC, in affirming the conviction against this defendant, did not have the benefit of it. The *Epps* ruling makes it possible to award a new trial here simply because the information is newly available to the defendant and because justice was not done.

In *Commonwealth v. Weichell*, Norfolk Superior Court No. 1980-76394 & 1981-77144 (April 10, 2017)(Veary, J., presiding), the defendant's motion for new trial was allowed 30 years after he was convicted of a first degree murder that was based upon the testimony of a single eyewitness. The defendant argued the existence of newly discovered evidence in the form of eyewitness science and the Commonwealth's failure to provide a document to the defense that was exculpatory warranted a new trial. In addressing the changes in the law with respect to eyewitness identification, the motion judge stated, "our current model jury instructions and their associated

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rules do not apply to an analysis of a trial occurring in 1982. *Commonwealth v. Alcide*, 472 Mass. 150,165 (2015). Nevertheless in instances where courts are today called upon to examine past proceedings, are guided to be mindful of the concerns which gave rise to our more recent rules and instructions."

In *Commonwealth v. Cosenza*, Worcester Superior Court, Docket No. 0085CR430 (May 31, 2016)(Tucker, J., presiding), the motion judge correctly noted that in *Commonwealth v. Brescia*, 471 Mass. 381, 389-390 (2015), decided five months after *Gomes*, the Supreme Judicial Court "examined closely the principles guiding trial judge's in ruling on Rule 30(b) motions for a new trial." The judge in *Cosenza* granted the defendant's motion for new trial based upon new identification science and noted that despite that *Gomes* was not retroactive, he had broad discretion to ascertain whether justice may not have been done based upon a fundamental fairness standard and that the new science would have been a "real factor" in jurors' deliberations.

Even without a finding of error in a trial, a judge can order a new trial, as the judges did in *Commonwealth v. Pring-Wilson*, 448 Mass. 718 (2007) (prospective application of *Adjuntant* rule did not deny the defendant a just result) and *Cosenza*. Undoubtedly, judges have broad discretion to see that justice is done, and rule 30 allows them to exercise such discretion so as not to deny defendants who have suffered an injustice the relief that true justice requires. *See Brescia, supra* ("if it appears that justice may not have been done, the valuable finality of judicial proceedings must yield to our system's reluctance to countenance significant individual injustices."). The newly available evidence in this case casts real doubt on the justice of the defendant's conviction. See also *Commonwealth v. Bennett*, Suffolk Superior Court Docket No. 97-10114 (April 2019)(Krupp, J., presiding)(new trial awarded where newly discovered evidence consisting of several witnesses who contended that another individual committed the murder – all

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of whom were either unknown at the time of trial or who were known but failed to cooperate with the police or defense counsel for fear of being labeled a "snitch"). Here, not only is there the possibility that justice was not done, but there exists the very real prospect that an innocent man has been serving a crime he did not commit.

E. **At a minimum, the defendant is entitled to an evidentiary hearing.**

At a bare minimum, the defendant is entitled to an evidentiary hearing on the issue. *Commonwealth v. Greineder*, 458 Mass. 207, 219 (2010); *Commonwealth v. Grant*, 78 Mass. App. Ct. 450, 456 (2010) (judge should make factual findings, holding a hearing if necessary, regarding whether the court was closed and to what extent). The defendant concedes that the decision to grant an evidentiary hearing is committed to the sound discretion of the trial judge. *See Commonwealth v. Licata*, 412 Mass. 654, 660 (1992); *Commonwealth v. Dixon*, 395 Mass. 149, 151 (1985) (trial judge has broad discretion). However, "where a substantial issue is raised and is supported by a substantial evidentiary showing, the judge should hold an evidentiary hearing." *Commonwealth v. Steward*, 383 Mass. 253, 260 (1981). The pertinent factors determining whether a hearing should be held are the seriousness of the issue and the adequacy of the showing on the issue. *Id.* at 257-258. Clearly, a violation of a defendant's fundamental rights under the Due Process Clause of the Fourteenth Amendment, as well as his right to present a defense under the Sixth Amendment and his right against self-incrimination under the Fifth Amendment are serious. *See Commonwealth v. Philyaw*, 55 Mass. App. Ct. 730, 736-738 (2002) (holding that judge should have held an evidentiary hearing on allegations that a juror had improperly inspected the crime scene and discussed facts about it with several jurors where the defendant had made an adequate showing by affidavit); *Commonwealth v. Truong*, 34 Mass. App. Ct. 668, 674 (1993) (holding that the defendant raised a substantial issue with respect to newly discovered evidence that the

codefendant was someone other than the defendant's wife); *Commonwealth* v. *Companonio*, 420 Mass. 1003 (1995) (case remanded for full evidentiary hearing where trial judge erred when she granted a new trial only on the basis of affidavits and arguments as record was insufficient to support such an order).

In *Greineder, supra* at 219, the Supreme Judicial Court remanded the case ordering the trial judge to determine whether or not the courtroom was closed as the defendant contended and to what extent. The trial judge had initially responded without conducting an evidentiary hearing. Id. at 219-20. Thereafter, members of the media, who were present at the initial trial, contacted the trial judge to inform them of their recollection, which differed from that of the judge. Id. at 220. Upon receiving this information, the trial judge conducted an evidentiary hearing spanning three days, upon which the judge provided a supplemental response to the Court. Id. Had the trial judge conducted an evidentiary hearing upon receiving credible information from the defendant, the SJC would have been able to render an informed opinion without necessitating an additional procedure. This defendant is not only entitled to an evidentiary hearing because he has raised a substantial issue, but also because the same would best serve judicial economy. *See also Grant, supra* at 450-60 (Appeals Court remanded case ordering trial judge to make a factual finding and a determination as to whether the defendant waived his right to a public trial. Court found "[b]ecause the judge did not inform the defendant of his right to a public trial and the record is unclear whether the defendant's trial counsel so informed the defendant, 'the component of the new trial motion dealing with closure presented a substantial question that required a hearing.'" *Id. quoting Edwards, supra.*). "Although the public's interest in the finality of criminal convictions is weighty, it is not always paramount." *Id.* "[W]e cannot rid ourselves by process alone of the possibility of

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error and of grave and lingering injustice." *Commonwealth v. Amirault, supra.* Here, the possibility of error and of grave and lingering injustice is significant.

III. CONCLUSION

WHEREFORE, the defendant prays that this Honorable Court grant its motion for a new trial.

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COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Appeals Court No. 2025-P-0736

Commonwealth)
)
v.)
)
Craig Hood)

RECORD APPENDIX
VOLUME 2 OF 4

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THE TRIAL COURT OF THE
COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Superior Court Dept.
Docket Nos SUCR93- 11566
SUCR94- 10749

2021 JAN 19 PM 12:31

Commonwealth	)
	)
v.	)
	)
Craig Hood	)

DEFENDANT'S SUPPLEMENTAL ARGUMENT IN SUPPORT OF HIS THIRD MOTION FOR NEW TRIAL AND REQUEST FOR AN EVIDENTIARY HEARING

NOW COMES the defendant in the above named matter, who hereby supplements his third motion for new trial to add a claim of ineffective assistance of counsel. In support thereof, the defendant states that in light of the status hearing transcripts dated March 30, 1995 and April 20, 1995, which were provided by the Commonwealth as post-conviction discovery in support of its opposition to the defendant's motion, it is clear that trial counsel's actions fell "measurably below what would be expected of an ordinary fallible lawyer" and, as a result, "deprived the defendant of an otherwise available, substantial ground of defence." Commonwealth v. Saferian, 366 Mass. 89, 96 (1974); Commonwealth v. Aspen, 85 Mass. App. Ct. 278,282-283 (2014); Commonwealth v. Cardenuto, 406 Mass. 450, 453-454 (1990).

I. Argument

A. The defendant was deprived of effective assistance of counsel when his attorney waived his appearance at the status hearings without his consent, failed to object to Attorney David Duncan's request to preclude him from obtaining discovery, agreed not to share said discovery or interview any witnesses referenced in the same, and failed to revisit the protective order prior to advising the defendant to plead guilty.

On March 30, 1995, just three months prior to the defendant's plea, a status hearing took place. There, defense counsel waived the defendant's appearance without his consent, and a discussion was held regarding the existence and disclosure of a report authored by Martin Kelly (3/30/95-2). This report, which was withheld from the defendant and his attorney absent an explicit ruling of the court, had never been seen. At the hearing, defense counsel not only acquiesced to the previous non-disclosure, but agreed to allow the non-disclosure to continue until the Ellis jury had rendered a verdict (3/30/95-2-4). At the time, the parties and the judge were merely "hopeful" that the Ellis jury would come back soon so the discovery could be released to defense counsel (3/30/85-8). Absent on the record is any justification or reason why discovery was being withheld from defense counsel until the eleventh hour, other than a passing reference that his case (or the Ellis case) has "special circumstances" (3/30/95-8).

The Ellis case ended in a mistrial on April 1, 1995. As such, any discovery that was promised to defense counsel on March 30, 1995 had not been provided by the next status date (4/20/95-2-3). On April 20, 1995, now only two months prior to the defendant's plea, the parties appeared for a second status hearing. Again, the defendant was not present nor did he assent to the waiver of his appearance. This time, Attorney David Duncan, who represented Sean Ellis, was also present (4/20/95-2). Attorney Duncan vehemently opposed the release of discovery to the defendant's attorney, insisting that it continue to be withheld until the conclusion of the Ellis re-trial (4/20/95-3). It was Attorney Duncan's position that if it was released to defense counsel, the press may report on it or misconstrue something said by defense counsel, prejudicing Ellis (4/20/95-3). The court agreed that the defendant's rights were being impeded by continuing to withhold discovery from him, ordering that defense counsel be provided with the same, conditional upon his agreement not to disclose it to anyone other than his private investigator (4/20/95-4). The

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court further ordered that none of the witnesses referenced in any of the discovery were to be interviewed by defense counsel (4/20/95-4). Defense counsel never objected to these prejudicial, unfair, and unnecessary conditions (4/20/95-4). Instead, he agreed to them.

The defendant was indicted for several crimes, the most serious being a double homicide. It is unquestionable that his case was closely intertwined with that of Sean Ellis. While the Ellis case may have been more newsworthy, both Ellis and the defendant had an equal constitutional right to be fully informed of all evidence against them in preparing for trial. Likewise, both had a constitutional right to present a defense and to effective assistance of counsel. Here, the constitutional rights of Ellis undoubtedly trumped and thwarted those of this defendant, as the Court clearly seemed to be more concerned with Ellis getting a fair trial than Hood. Defense counsel's assent to the protective order was not just ineffective but unconscionable. Indeed, even the Commonwealth agrees that "an experienced and zealous advocate" would have revisited the discovery order prior to the defendant's plea. *See* Comm.Opp. at 37. Hood's attorney did not.[1]

As a threshold matter, Ellis's defense attorney had no standing to intervene in the defendant's case and to object to the release of evidence held by the Commonwealth to the defendant. Additionally, even if press on the Ellis case would have been detrimental to Ellis, that threat could not be pacified with an order prohibiting Hood's attorney from sharing evidence with

[1] In support of its contention that it is constitutionally permissible to limit pretrial discovery in criminal cases, the Commonwealth cites Commonwealth v. Francis, 432 Mass. 352 (2000)(prohibition against defense counsel asking witness on the stand about the location of his current residence and place of business) and Commonwealth v. Cobb, 469 Mass. 469 (1980)(murder case involving motorcycle gangs where protective order necessary to ensure personal information of witnesses). *See* Comm's Opp at. 36. Notably, both of these cases involve protective orders where the threats to witnesses was inherent and clear. This case involves no such threat. Instead, the order was granted merely to protect Ellis's right not to be tried in the media, while simultaneously violating the defendant's right to access evidence against him. Certainly, if dissemination of information to the press was an issue, a simple gag order would have sufficed.

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his own client, or interviewing any witnesses referenced in the discovery. Defense counsel's failure to object to Attorney Duncan's standing, and to the order, constituted ineffective assistance of counsel. Agreeing not to interview witnesses who many have been crucial to the defense was tantamount to agreeing to forgo conducting an investigation. This is textbook ineffective assistance of counsel. *See* Commonwealth v. Phinney, 446 Mass. 155 (2006)(new trial awarded despite Defendant's confession to murder due to ineffective assistance of counsel as counsel conducted an inadequate investigation and failed to present a viable third party culprit defense). Commonwealth v. Haggerty, 400 Mass. 437 (1987)(new trial ordered where defense counsel failed to investigate and pursue the sole defense available, namely the possibility that the victim's death was caused by a heart attack and not by the defendant's conduct).

"It is beyond debate that a defendant has the right to gain access to relevant evidence that bears on the question of guilt or innocence or that will otherwise help his defense, and to use that evidence to confront witnesses through cross-examination." Commonwealth v. Holiday, 450 Mass. 794, 802 (2008). *See* also Commonwealth v. Mitchell, 444 Mass. 786, 795 (2005). Cf. Smith v. Illinois, 390 U.S. 129, 131, (1968). While it is constitutionally permissible to impose limits on pretrial discovery in criminal cases, United States v. Randolph, 456 F.2d 132, 135-136 (3d Cir.1972), to ensure the safety of witnesses, such limits cannot deny the defendant his right to the effective assistance of counsel and a fair trial. The Commonwealth bears the burden of demonstrating that the safety of a witness would be put at risk if information, otherwise required to be disclosed, was made available to the defendant. *See* Francis, *supra* at 357-358. Here, defense counsel was ineffective by failing to hold the Commonwealth to this burden.

The transcripts from these status hearings provide concrete proof that defense counsel was prevented from conducting a full investigation on the defendant's behalf because the Ellis

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case was obviously deemed to be of greater importance as it involved the shooting of a Boston Police Officer. The transcripts also confirm that the defendant was not privy to evidence that he should have had the opportunity to consider prior to accepting two consecutive life sentences. This is true since the order was never revisited prior to the plea. The end result was that legal advice was provided by uninformed counsel to an uninformed defendant. Commonwealth v. Moreau, 30 Mass. App. Ct. 677 , 682-683 (1991), cert. denied, 502 U.S. 1049 (1992) (assessment of reasonableness of counsel's advice to plead guilty based on counseled confession cannot be made without knowledge about strength of Commonwealth's case). Phinney, *supra* 162-163 (even where Commonwealth's case was strong considering the defendant confessed to the murder, order allowing motion for new trial upheld on claim of ineffective assistance of counsel where counsel had his secretary review the police reports instead of doing it personally). Indeed, a violation of the rights afforded the defendant under the Sixth Amendment to the United States Constitution, as well as art. 12 of the Massachusetts Declaration of Rights occurred, Strickland v. Washington, 466 U.S. 668, 683, 104 S.Ct. 2052 (1984), which prejudiced the defendant by creating "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," Id. at 694, or a "strong possibility" that it would have been. Ouber v. Guarino, 293 F.3d 19, 33 (1st Cir. 2002).

"Although conflict of interest may exist when an attorney's regard for one duty leads to the disregard of another, Commonwealth v. Goldman, *supra* at 503, 480 N.E.2d 1023, a lawyer's duty to advance the interests of his client are properly limited by his duty to comply with court rules." *See* Holiday, *supra* at 807. Nonetheless, it is the duty of defense counsel to object to a ruling that would so bind him in the first place. Here, defense counsel seemed complacent in allowing the rights of Ellis to circumvent that of his own client. These actions fell "measurably below what

would be expected of an ordinary fallible lawyer" and, as a result, "deprived the defendant of an otherwise available, substantial ground of defence." Saferian, *supra.*

B. The Commonwealth's opposition supports that an evidentiary hearing is absolutely necessary.

The decision to grant an evidentiary hearing is committed to the sound discretion of the trial judge. *See* Commonwealth v. Licata, 412 Mass. 654, 660 (1992); Commonwealth v. Dixon, 395 Mass. 149, 151 (1985) (trial judge has broad discretion). However, it is equally true that "where a substantial issue is raised and is supported by a substantial evidentiary showing, the judge should hold an evidentiary hearing." Commonwealth v. Steward, 383 Mass. 253, 260 (1981). Here, the Commonwealth has placed the credibility of defense counsel, Stephen Weymouth, squarely before the court.[2] As such, it is impossible for this Court to give "grave consideration," as is required, to Attorney Weymouth's credibility absent a hearing. *See* Commonwealth v. Robertson, 357 Mass. 559, 562 (1970).

It is crucial for this Court to hear testimony from Attorney Weymouth with respect to what he said to the press that may have led to the issuance of a protective order to determine whether such order was necessary in the first place in the absence of any showing made on the record. Likewise, Weymouth must clarify what evidence was provided to him prior to trial, what evidence he was made to wait for, what evidence he kept from the defendant, why he didn't revisit the protective order, what witnesses, if any, he failed to interview as a result of the protective order, and what effect, if any, the protective order had on both his trial preparation and his decision to advise the defendant to plead guilty to a double homicide. *See* Holiday, *supra* (an evidentiary hearing on the defendants' motion for a new trial was necessary so trial counsel for both defendants

[2] In its opposition, the Commonwealth states, "Based on these convenient inconsistencies, it strains logic that the plea counsel's proclamations [in his affidavit] regarding a discovery order from twenty-five years ago are accurate." *See* Comm.Opp. at 37.

could provide testimony regarding the protective order and how it affected their ability to prepare for trial; no error because no prejudice and the defendant was fully informed of the contents of the redacted information, just prevented from having copies).

The pertinent factors determining whether a hearing should be held are the seriousness of the issue, and the adequacy of the showing on the issue. Steward, *supra*, at 257-258. In this case, the defendant has shown that the issue is serious, as it stems from the most severe charge of which one can be accused, the conviction for which resulted in two consecutive life sentences. Likewise, the error was also serious because it deprived the defendant of his constitutional right to a fair trial, to present a defense, to be privy to all evidence against him before making a decision to tender a plea, to effective assistance of counsel, and to tender a plea that is well-informed and made knowingly, intelligently, and voluntary.

Undoubtedly, an evidentiary hearing in this case is both warranted and compelled. *See also* Commonwealth v. Laguer, 410 Mass. 89, 97 (1991)(a hearing on the question of ethnic slurs against Hispanics was required to determine whether the ethnically-biased statements were made because the "possibility raised by the affidavit that the defendant did not receive a trial by an impartial jury, which was his fundamental right, cannot be ignored"). Indeed, where the Commonwealth concedes that credibility is a live issue, and the defendant has raised a substantial issue, making an adequate showing that a hearing is warranted, one must be granted.

II. Conclusion

WHEREFORE, the defendant prays that this Honorable Court grant his motion for a new trial or, in the alternative, grants him a full evidentiary hearing.

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THE TRIAL COURT OF THE
COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Superior Court Department
Docket Nos. SUCR93- 11566
SUCR94- 10740

Commonwealth	)
	)
v.	)
	)
Craig Hood	)
	)

DEFENDANT'S SECOND SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION FOR NEW TRIAL[1]

OVERVIEW

(1) *Brady* violations require Hood's guilty plea to be vacated, as exculpatory evidence that was in the possession, custody, and control of the prosecution, and persons subject to the prosecutor's control, were prejudicially withheld;

(2) Newly discovered evidence, not known to the defendant or his attorney at the time of the plea, which is both material and credible, casts real doubt on the justice of the conviction;

(3) The undisclosed exculpatory evidence and newly discovered taints the strongest evidence against the defendant (i.e., his confession) because it was elicited by Dets. Keeler and Brazil;

(4) The undisclosed exculpatory evidence and newly discovered evidence would have made a difference in Hood's decision to tender a plea because such evidence raises a viable third-

[1] Hood hereby refers to and incorporates by reference his original motion for new trial, and supplemental memorandum. Hood files this second supplemental memorandum to include additional information obtained since the filing of the same, and has applied that additional information to his current argument as applicable; he has made an effort to better clarify and organize certain arguments in a manner easiest for this Court to follow.

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party culprit defense, a *Bowden* defense, and consists of abundant grounds to impeach high-ranking members of the Mulligan/Kirk/Brown Murder Task Force, and their Police Commissioners; and

(5) Even with evidence that the same firearm used to kill Kirk/Brown was used by Hood in another shooting, it is still not enough to render the new and undisclosed evidence inconsequential.

ARGUMENT

I. Undisclosed exculpatory evidence unearths *Brady* violations, which entitles Hood to a new trial.

A motion for a new trial pursuant to Mass. R. Crim. P. 30 (b) is the proper vehicle by which to seek to vacate a guilty plea. Commonwealth v. Fernandes, 390 Mass. 714, 715 (1984). Under Mass. R. Crim. P. 30 (b), a judge may grant a motion for a new trial any time it appears that justice may not have been done, which is committed to the sound discretion of the judge. Commonwealth v. Moore, 408 Mass. 117, 125 (1990). Where exculpatory evidence was not disclosed prior to the plea, a defendant's assertion that justice was not done is doubly persuasive.

The undisclosed exculpatory evidence claimed by Hood is as follows:

1) On September 9, 1003, Detectives Robinson, Acerra, Beers, and Marquardt stole $26,000 from Robert Martin when he was stopped for suspected drug distribution. On such date, Accera identified himself as an "INS" officer, giving a false name to Martin. Detectives confiscated 7 pounds of marijuana in his vehicle and served him with a search warrant for his apartment. Robinson told Martin to open a safe in his apartment and Martin complied. The safe contained 22 additional pounds of marijuana. Martin was then told to open a safe in a second apartment. When Martin asked Marquardt if detectives would release his roommates and friends, who were present in the apartment when it was searched, Marquardt told him that although police had found $8,000 in a filing cabinet in the first apartment, his friends would be released only if police found more money in the safe in the second apartment. Martin opened the safe, Acerra removed $18,000 to $20,000, and Martin's roommate and friends were released. The police report documenting the execution of the search warranted declared that several pounds of marijuana and drug paraphernalia were seized but failed to report the seizure of any money (R.55-56).

2) An FBI informant had "intimate knowledge" that Mulligan blackmailed people, "committed murder as a cop," and regularly shook down pimps, dealers, bar owners, stores, and prostitutes

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for money. The reports also revealed that he "liked" young black girls and was the subject of a Federal investigation as early as 1986 (R.56-57).

3) Detective Foley, who investigated the Mulligan murder relayed to several detectives on September 30, 1993 that a month earlier, he was investigating threats made against Raymond Armstead, Jr., a correctional officer, and that Armstead, Jr. told Foley that that his father had a "beef" with Mulligan because Mulligan would not "leave [Armstead, Jr.'s] fourteen year old sister alone." Armstead, Jr. told Foley that his father was going to kill Mulligan and knew Mulligan worked a detail at Walgreens that day, sleeping in his vehicle during it. Armstead, Jr. told Foley that he would "read about it in the papers" that Mulligan had been "[s]hot between the eyes at Walgreens." When other detectives spoke with Armstead, Jr. about his statements, he denied making them. As a result, police determined that Foley had supplied false informant on the matter, that he was suffering from severe emotional depression, and he was relieved from duty. He subsequently treated at a hospital and a psychological evaluation cleared him to return to work (R.57-58,122).

4) An ACD report dated November 17, 1993 revealed that an anonymous tipster had reported that 18 months earlier, Mulligan and Robinson had robbed 2 drug dealers of a large sum of money at gunpoint (R.58).

5) Interview notes with Ronald Hansen on May 9, 1996 confirmed that Robinson was using Hansen and his ex-wife as informants, that the ex-wife had known Mulligan since she was 17 years old, and that he "used to take young girls for rides in his car." With respect to the murder, Hansen reported that Mulligan "took drugs from the girlfriend of one of the killers and told her if her boyfriend wanted the drugs back he would have to come and see [Mulligan] or he'd arrest her." He also said that "[o]ne of the girls killed in Mattapan was the girlfriend," referring to Brown or Kirk. According to the ex-wife, Mulligan carried a .25 caliber gun on his ankle (R.58-59).

6) The same day as the shooing, there were tips provided to Boston police on a hotline. One such tip noted a call from a detective who said that his brother, who was a guard at South Bay, told him that an inmate William Bell told his brother that a drug dealer named Armstead had a contract out on Mulligan. Another tip was from a cab driver who drove Mulligan's girlfriend to the parking lot on the night of the murder where she shot him with a .25 caliber gun the victim had given her for self-defense. There were two tips that a "Royce Hill" was an accomplice to the shooting. Finally, there were three separate tips that someone at the Essex County House of Correction had information regarding Mulligan's murder. Although the tips were purportedly given to police to investigate, there was no record of such other than one that had been assigned to Marquardt and Accera (R.59-62).

7) Det. Daniel Keeler routinely lied under oath, was known to coerce defendants and witnesses, kept electronic notes he failed to turn over to prosecutors, paid off witnesses and, according to former Suffolk County District Attorney Rachel Rollins, was involved in years' worth of corruption with the very same Boston Police Detectives who were an integral part of Hood's investigation, i.e., Dets. Brazil, Accera, Robinson, and Marquadt (R.396-398).

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8) Det. Mulligan, the victim of a related homicide, which was investigated simultaneously with the Hood investigation, was involved in years' worth of corruption by the same corrupt detectives who were biased and had motive to solve all three homicides as quickly as possible (R. 115, 434, 466-470).

9) Dets. Brazil, Robinson, and Acerra were indicted and Det. Brazil was granted immunity for his testimony against Dets. Robinson, Acerra, and Marquadt (R.115).

10) Det. Robinson testified before federal grand jury that Det. Marquadt was aware that he did not account for all the money seized during his searches and that "anyone that was working with us knew what we were doing and how." It was also revealed that Det. Acerra would lie about money seized during arrests and, when asked for it, he would initially stall, and then it would miraculously show up in a heat-sealed envelope but the money obtained was not even in circulation at the time of the search (R.434).

Such undisclosed exculpatory evidence casts doubt as to whether justice was done and proves egregious *Brady*-violations. Brady v. Maryland, 373 U.S. 83 (1963). Hood was uninformed of exculpatory evidence of a corruption ring in which Det. Mulligan and several other BPD homicide detectives participated. Hood's plea was tainted and most assuredly was not made intelligently, knowingly, or voluntarily. This violated Hood's Fifth, Sixth and Fourteenth Amendment, as well as Article 12 of the Massachusetts Declaration of Rights. Commonwealth v. St. Germaine, 381 Mass. 256, 261 n.6 (1980); Commonwealth v. Scott, 467 Mass. 336 (2014); Brady, at 87.

To obtain a new trial on the basis of withheld exculpatory evidence, a defendant must establish (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) "prejudicial." Commonwealth v. Murray, 461 Mass. 10. 19, 21 (2011). *See also* Strickler v. Greene, 527 U.S. 263, 281-282 (1999)(evidence is favorable to the accused if it is either exculpatory or impeaching). The Commonwealth's duty to disclose exculpatory evidence is not limited to information that the trial prosecutor possesses, or that evidence of which the prosecutor is personally aware. Instead, the discovery obligation extends to any member of the prosecution

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team, including police commissioners, detectives, members of the ballistics unit, or members of the crime lab. Kyles v. Whitley. 514 U.S. 419, 433-434 (1995). The Commonwealth's *Brady* obligation continues post-conviction with the prosecutor and police agents. Commonwealth v. Daniels, 445 Mass. 392, 404-405 (2005); Commonwealth v. Camacho, 472 Mass. 587, 598-599 (2015).

The first question to answer under *Brady* is whether the evidence was in the possession, custody, or control of the prosecutor, or a person subject to the prosecutor's control. Not only was it an egregious *Brady* violation for the BPD detectives to have failed to turn over the exculpatory evidence to the prosecutor, who then should have disclosed it to Hood, but the BPD Commissioners, Bratton and his successor Evans,[2] were also obligated to disclose the fact that an investigation into these highly placed detectives, was underway (R. 129). Det. Mulligan and Det. Robinson, who was later assigned by the Commissioner to investigate and assist in the prosecution of the Mulligan, Kirk, and Brown's murders,[3] were suspects and subject to Boston Police Department Anti-Corruption Division (ACD) internal investigations for armed robberies of known drug dealers and neighborhood businesspersons (R.119-120). As early as September 28, 1993, Commissioner Bratton was quoted stating that he knew there to be twenty-four complaints filed against Det. Mulligan with one still pending at the time of Det. Mulligan's death (R.98).

Notably, the ACD, who was actively investigating the Mulligan Robbery Information throughout the months prior to Hood's plea, are required under Rule 101 of the BPD Rules and

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[2] "Sgt. O'Leary testified that Commissioner Evans also headed Mulligan's homicide investigation in his former capacity as a Superintendent (R. 155).

[3] Det. Brazil told Kirk/Brown family members, "The task force which was formed to investigate the murder of Det. John Mulligan was now being utilized in the investigation of the murder of Celine Kirk and Tracy Brown" (R.16,399).

R 70

Procedures to "report directly to the police commissioner... when a suspicion of significant corruption enters an investigation." Further, consistent with Judge Ball's findings in the matter of Ellis, "The Mulligan Robbery Information plainly constituted 'significant corruption' of which Commissioners Bratton and Evans should have been apprised (R.155).[4]

Before deciding whether to plea or exercise his right to trial, Hood should have received but was denied, exculpatory discovery regarding Det. Mulligan's alleged armed robbery of a drug dealer, an allegation which was further supported by Hotline tips, none of which were disclosed to the defense: specifically, the Mulligan Robbery Information revealed that a credible tipster reported that Dets. Mulligan and Robinson robbed a drug dealer at gunpoint in 1992. Not only did BPD Hotline tips indicate corruption by Dets. Mulligan and Robinson via armed robbery but, as was later discovered, Dets. Mulligan, Robinson, Acerra, and Brazil were involved in a widespread corruption scheme whereby that they engaged in armed robbery of Martin and others that led to FBI reports and investigations (R.113-116, 118-121).

Dets. Brazil, Acerra, Marquadt, and Robinson, who were all members of Det. Mulligan's corruption racket, were also members of the prosecution team in Hood. Each and every one of the surviving members of this corrupt crew shared the motive to cover up any evidence of their own wrongdoing by assuring the quickest resolution to the Kirk/Brown/Mulligan murders in order to preempt investigation into their own criminal conduct. Dets. Brazil, Acerra, Marquadt, and Robinson's involvement in Det. Mulligan's homicide investigation was "hardly insignificant," but instead, they were "involved in every aspect of the investigation that led to Ellis' prosecution" (R.

[4] Judge Ball's decision in Ellis cites a 1996 Boston Globe article reporting that the BPD had "revived" the robbery allegation against Dets. Mulligan and Robinson, and contained a quote from Commissioner Evans that addresses this information (R. 113-114).

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147). The same applies here, as Dets. Brazil, Keeler, Robinson and Marquadt were also involved in nearly every aspect of Hood's case.

Hood and his attorney should have been privy to Mulligan Robbery Information, which was known to the ACD, commissioners, and at least several members of Det. Mulligan's inner circle of corrupt officers, all of whom were integral to the Hood case, and were in positions of leadership throughout the murder investigations of Kirk, Brown, and Mulligan. These corrupt officers were in charge of and intricately involved in the Hood case, and thereby hobbled justice, as "members of the prosecution team to whom the [*Brady* obligation] extends includes members of [the prosecutor's] staff and...any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to [the prosecutor's] office." Commonwealth v. Sleeper, 435 Mass. 581, 605(2002)(quotation omitted). *See also* Murray, 461 Mass. at 19 ("A police officer is subject to the prosecutor's control when he acts as an agent of the government in the investigation and prosecution of the case.") Thus, regardless of whether the prosecutor knew about the exculpatory evidence, it nonetheless should have been disclosed. *See* Wearry v. Cain, 577 U.S. 385 (2016); Smith v. Cain, 132 S. Ct. 627 (2012); Brady v. Maryland, *supra*; Commonwealth v. Ellis, 475 Mass. 459 (2016); Scott, *supra* at 345; Commonwealth v. Martin, 427 Mass. 816, 823 (1998)(SJC reversed conviction because the prosecutor failed to turn over evidence from crime lab that prosecutor did not even know existed); Murray, *supra* at 19 ("A police officer is subject to the prosecutor's control when he acts as an agent of the government in the investigation and prosecution of the case."). *See also* Commonwealth v. Francis, 474 Mass. 816, 826 (2016); Youngblood v. West Virginia, 547 US 867, 869-870 (2006)(*per curiam*)("*Brady* suppression occurs when the government fails to turn over even evidence that is known only to police investigators and not to the prosecutor."). As such, the

exculpatory evidence in question was in the possession of a member or agent of the prosecution team. *See* Kyles v. Whitley, *supra* at 433-434. It was a disturbing reality that the corrupt officers who were integral to the Hood prosecution, knew of their own corruption and had a duty to disclose it to the defense or extricate themselves from the investigation to prevent a conflict of interest.

Under United States v. Agurs, 427 U.S. 97, 107 (1976), the obligation to disclose exculpatory evidence extends to defendant who have made only general requests, or even no request at all. Nonetheless, prior to trial, Hood entered into a pre-trial conference agreement with the prosecutor whereby it was agreed that he would provide hood with all "exculpatory evidence." Commonwealth v. Gallarelli, 399 Mass. 17 (1987)(pretrial conference report stated Commonwealth would turn over exculpatory evidence and they failed to do so). Hood also filed a motion for all discovery relevant to the Ellis/Patterson case.[5] Yet the exculpatory evidence about these detectives' years of corruption, lying, falsifying affidavits, planting evidence, armed robbery, and stealing was still not disclosed by the Commonwealth or its police agents prior to Hood's plea. *See* Kyles v. Whitley, *supra* at 433-434 (the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police); In the matter of a grand jury investigation, 85 Mass. 641, 658 (2020)(prosecutor was obligated to disclose potentially exculpatory information about police officer to unrelated criminal defendants in cases where either officer was a potential witness or prepared a report in the criminal

[5] Incidentally and significantly, Judge Ball agreed with the defense in Ellis, after a full evidentiary hearing, that all relevant discovery in the Commonwealth's possession had not been turned over by the prosecutor (R.153-157). Here, the Commonwealth claims that everything provided to Ellis was provided to Hood's attorney pursuant to his discovery motion. If this is accurate, it stands to reason that if Hood's attorney received only what Ellis's attorney received, Hood's attorney also didn't receive everything. Simply put, if the discovery provided by the Commonwealth to Ellis was inadequate or incomplete, that same discovery was inadequate or incomplete when it was provided to Hood's attorney.

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investigation). Because the duty also extends post-conviction, and that duty was not met in Hood's case, indubitably, a *Brady* violation occurred.

Because the investigation by the Anti-Corruption Division was well underway at the time of Hood's plea on June 19, 1995, the failure to disclose the same constituted a *Brady* violation.[6] At the time, they were investigating thirty-three incidents of the falsification of search warrant affidavits that enabled them to conduct both armed and unarmed robberies. According to Det. Brazil, twenty-eight of these robberies involved Det. Mulligan. (R. 115). Not only did the Police Commissioner fail to disclose this *Brady* material to Hood, but he also compounded this error exorbitantly by allowing the same detectives who were the subject of the investigation to continue to work homicide cases, one of which was Hood's.

A crucial question for this Court is whether that information was exculpatory. The definition of exculpatory is broad. "The *Brady* obligation comprehends evidence which provides some significant aid to the defendant's case, whether it furnishes corroboration of the defendant's story, calls into question a material, although not indispensable, element of the prosecution's version of the events, or challenges the credibility of a key prosecution witness." *See* Commonwealth v. Ellison, 376 Mass. 1, 22 (1978). "Evidence may be favorable or exculpatory, and thus required to be disclosed, although it is not absolutely destructive of the Commonwealth's case or highly demonstrative of the defendant's innocence." Commonwealth v. Laguer, 448 Mass. 585, 595 (2007). Evidence tending to impeach an expert witness for incompetence or lack of reliability falls within the ambit of the Commonwealth's obligations under *Brady*. *See* Commonwealth v. Sullivan, 478 Mass. 369 (2017). Here, the withheld evidence about Dets.

[6] The anti-corruption unit began its investigation into Dets. Mulligan and Robinson on November 17, 1993 (R.125).

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Keeler, Mulligan, Brazil, Robinson, Accera, and Mardquadt was exculpatory. *See* Ellison, *supra* at 22. Information about the egregious misconduct of the detectives who were responsible for investigating the Kirk and Brown homicides would have significantly aided in Hood's defense, as it would have served to corroborate Hood's story, call into question a material element of the prosecution's version of the events, and impeach the credibility of key prosecution witnesses.

Since exculpatory evidence was withheld by agents of the prosecution team when it should have been disclosed, the final question to answer concerns prejudice. Hood was unfairly prejudiced by the nondisclosure of the exculpatory evidence because had the evidence been disclosed prior to Hood's plea, he would have opted to go to trial rather than plead guilty. Undoubtedly, had the Commonwealth complied with its obligation to timely disclose exculpatory evidence of wide-scale corruption among the very homicide detectives involved in Hood's investigation and prosecution, such evidence would have gone a long way to even the playing field where it was Hood's word against theirs.

Self-preservation interests and bias of numerous BPD detectives who rushed to close all three related homicide cases as quickly as possible, in order to curtail investigation into their illegal conduct, apparently motivated the lack of disclosure of exculpatory evidence. This led to a failure to investigate further suspects or tips. Hood was certainly prejudiced by failure to tend to, follow-up on, and disclose to the defense, tips received by the BPD regarding the Mulligan Robbery Information i.e., the Armestead Hotline Tips, the Foley Report and the Hansen Report. Undoubtedly, whoever killed Det. Mulligan had the motive to kill Kirk because she was an eyewitness to it. Also, because the murder weapons that killed Det. Mulligan were stashed in Kirk and Brown's apartment, it was crucial for the real killer to ensure they wouldn't be discovered by or turned over to police. Likewise, if Kirk was the girl referenced by Hansen that Det. Mulligan

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had threatened and taken drugs from, ordering her boyfriend to see him, detectives would have wanted Hood out of the way if they thought he was her boyfriend since he was a link to Det. Mulligan's corruption.

Undoubtedly, the undisclosed exculpatory evidence of police misconduct would have undermined, if not completely eradicated, law enforcement's credibility about crucial parts of the Commonwealth's case, as the Commonwealth relied heavily on evidence obtained by these same corrupt detectives. The undisclosed exculpatory evidence would have put Hood in the strategic posture of facing imminent trial against police officers who were suspected of armed robberies, theft of drug money, usurping the authority of the Court's by filing fraudulent affidavits to gain access to businesses and drug dealers to rob them, as well as a litany of various federal and state crimes. In short, such exculpatory evidence would have completely undermined the Commonwealth's witnesses' reliability, trustworthiness, and credibility.

As the SJC reasoned in Ellis, had there been evidence about the police misconduct at a trial, "a reasonable jury likely would have had diminished confidence in the integrity and thoroughness of the police investigation in general. Not only would this likely have caused them to question the reliability of some of the evidence presented by the prosecution, it also may have elevated in significance certain aspects of the investigation that may otherwise have appeared unimportant." *See* Ellis 475 Mass. at 479. When new evidence "raises substantial doubts regarding the good faith and honesty of some of the investigating detectives, its potential inferential significance is multiplied many-fold, because a jury reasonably may have had diminished confidence in the integrity and good faith of the investigation and the evidence that arose from it." Id. at 480. Although Hood tendered a plea, he did so uninformed of crucial exculpatory evidence,

and so his decision to do so was not made after carefully considering who jurors would find more credible; him or numerous seasoned homicide detectives.

II. **Newly discovered evidence, not known to the defendant or his attorney at the time of the plea, which is both material and credible, casts real doubt on the justice of the conviction.**

The same undisclosed exculpatory evidence that constituted a *Brady* violation is also newly discovered evidence. The law governing a motion for a new trial based on newly discovered evidence was set forth in Commonwealth v. Grace, 397 Mass. 303, 305-306 (1986). A defendant must establish both that the evidence is newly discovered and that it casts real doubt on the justice of the conviction .... The evidence said to be new not only must be material and credible ... but also must carry a measure of strength in support of the defendant's position. Moreover, the judge must find there is a substantial risk that the jury would have reached a different conclusion had the evidence been admitted at trial. ... The motion judge decides not whether [a] verdict would have been different, but rather whether the new evidence would probably have been a real factor in the jury's deliberations. Id. *See also* Commonwealth v. Drayton, 479 Mass. 479, 489 (2018)(Drayton II); Commonwealth v. Raymond, 450 Mass. 729, 733 (2008). A defendant must also show that the evidence was "unknown to the defendant or his counsel" and "not reasonably discoverable" by them at the time of trial. Drayton, *supra* at 489. Hood has met his burdern.

Hood does not have to establish that the new evidence proves his innocence. Commonwealth v. DiBenedetto, 458 Mass. 657, 664 (20ll). It is enough that after a full and reasonable assessment of the record, the absent evidence would have played an important role in a jury's deliberations and conclusions, even if it is not certain that the evidence would have produced a verdict of not guilty. *See* Commonwealth v. Tucceri, 412 Mass. 401, 414 (1992). *See*

also United States v. Wright, 625 F.2d 1017. 1019 (1st Cir.1980); United States v. Montilla-Rivera, 115 F.3d 1060, 1065 (1st Cir. 1997).

The credible evidence here is new because it was not known by Hood prior to his plea, and it was not discoverable or available to the defense prior thereto. Because the new evidence is exculpatory and would have been a real factor in a jury's deliberations, it cannot be said that justice was done. *See* Commonwealth v. Rosario, 477 Mass. 69 (2017); Commonwealth v. Cowels, 470 Mass. 607, 623 (2015); Commonwealth v. Sullivan, 469 Mass. 340 (2014) (newly available or newly discovered evidence may warrant relief).

Hood's argument is analogous to the arguments made by the defendant in Scott, *supra*, where the defendant pled guilty to a drug offense where the drug certificate was signed by Annie Dookhan and, at the time, he was unaware of her misconduct. The SJC held that Dookhan's misconduct was egregious enough to make his plea involuntary, remanding the case for further determination about whether he would have pled guilty had he known of the misconduct. Id. at 354. On appeal, the Commonwealth argued that the defendant's admissions during the colloquy proved his guilt, and that he failed to establish that Dookhan engaged in wrongdoing in her testing of the substances at issue in his case. Id. at 345. Both arguments fell short.

In Scott, the SJC looked to Ferrara v. United States, 456 F.3d 278, 290 (1st Cir.2006) for guidance in cases where a defendant pled guilty then later claimed misconduct by a member of the prosecution team. Ferrara involved a prosecutor who deliberately manipulated a key witness, which the court found "paint[ed] a grim picture of blatant misconduct." Id. at 293. The SJC in Scott used the same analysis as that used in Ferrara, which held that "when a defendant seeks to vacate a guilty plea as a result of underlying government misconduct, rather than a defect in the plea procedures, the defendant must show both that 'egregiously impermissible conduct...by

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government agents...antedated the entry of his plea' and that 'the misconduct influenced his decision to plead guilty or, put another way, that it was material to that choice.'" Id. at 290.

Here, as was the case in Scott, there was "egregious government misconduct...by government agents" that "was material" to Hood's choice to plead guilty. But for the actions of the biased, untruthful, and corrupt detectives who investigated the case, Hood would not have pled guilty. Indeed, just as was the case in Scott, there is a sufficient nexus between Hood's plea and the misconduct of at least four detectives tasked with investigating his case. Id. (finding that "furnishing a drug certificate signed by Dookhan as a primary or secondary chemist in the defendant's case is sufficient to establish the requisite nexus between the defendant's case and Dookhan's misconduct").

As the Scott Court so articulately stated,

> "This particularly insidious form of misconduct, which belies reconstruction, is a lapse of systemic magnitude in the criminal justice system. Thus, it is incumbent upon us to exercise our superintendence power to fashion a workable approach to motions to withdraw a guilty plea brought by defendants affected by this misconduct. We must account for the due process rights of defendants, the integrity of the criminal justice system, the efficient administration of justice in responding to such potentially broad-ranging misconduct, and the myriad public interests at stake. Moreover, in the wake of government misconduct that has cast a shadow over the entire criminal justice system, it is most appropriate that the benefit of our remedy inure to defendants. *See* Lavallee v. Justices in the Hampden Superior Court, 442 Mass. 228, 246, 812 N.E.2d 895 (2004)." Scott, *supra* at 353.

The same holds true for the misconduct that occurred here. The actions of the corrupt detectives diminished the integrity of the Boston Police Department, of the entire criminal justice system, and of Hood's case. As such, the only just remedy for Hood lies in granting his motion to vacate his guilty plea.

A. Detective Daniel Keeler

i. Det. Keeler's problematic history at the BPD

Det. Keeler played an integral role in Hood's conviction. Not only was he actively involved in the investigation, but for the most part, he was actually in charge. He appeared personally at the Kirk/Brown crime scene, arrested Hood at his girlfriend's house two days later, transported Hood to holding thereafter, interrogated Hood, and ultimately elicited his confession (R.261-286, 334-335, 435-436). He also interviewed Nikki Coleman, (Kirk's friend, who placed Hood at Kirk's apartment earlier in the day), interviewed David Murray (uncle of Kirk, Brown, and Ellis and first to mention Hood as a potential suspect), and was one of the individuals personally responsible for assembling the fifty-man task force that simultaneously investigated both the Mulligan murder and the murders of Kirk and Brown (R. 129). At the time of the defendant's plea, he and his attorney were completely oblivious about Det. Keeler's reputation for untruthfulness and his misconduct in other cases (R.539-541). This newly discovered evidence, learned post-conviction, bolsters concern about his conduct in this case, and most certainly would have affected Hood's willingness to plead guilty to a double homicide resulting in two consecutive life sentences.

Det. Keeler is known to have engaged in misconduct throughout his tenure with the Boston Police Department.[7] He was subject to a dozen internal affairs investigations and complaints since

[7] This history began when he was only a recruit, as he received a four-day suspension for verbally and physically harassing a group of women at a local bar on June 3, 1980. David S. Berstein, Shades of Keeler, THE BOSTON PHOENIX, (Sep. 13, 2006) (https://thephoenix.com/article_ektid22561.aspx). Credited in that article, Det. Keeler allegedly told the women, "We're fucking cops and we'll do what we want around here and I'll grab whoever I want." He threatened to get city agencies to close the bar, told another woman he would kill her, and grabbed another woman by the breasts. In the first eight years of his tenure, Det. Keeler accumulated seven separate complaints, including five for alleged physical abuse. During this time, he was admonished for shooting at a car that he claimed was backing up toward his partner (R. 163-166).

2001. *See* Sergeant Daniel M. Keeler, The Woke Windows Project, https://www.wokewindows.org/officers/8220-daniel-m-keeler (reflecting internal affairs division metadata from 2002 onward) (R. 199) Among these, five findings of misconduct were sustained. Id.[8] In each of these incidents, internal affairs investigations concluded that there was sufficient evidence to support the allegations. *See* BPD Rule and Procedures, Rule 109 (1983). These include instances where Det. Keeler was found to have exhibited poor judgment and, more importantly, lied to investigators. *See* The Woke Windows Project, *supra.* (R. 197, 199). In one instance, the U.S. Attorney's Office accused Det. Keeler of revealing the identity of a confidential cooperating witness during a telephone call to an inmate in Federal Custody (R. 471-497). Although DEA agents confirmed from the inmate that Det. Keeler told him that the witness was an informant, the investigation was never concluded because the DEA agent was unable (or unwilling) to provide a copy of their report of the interview with the informant to the Boston Police Department Anti-Corruption Division (R.471-479,497).

In another incident from August 2006, surveillance tapes showed Det. Keeler pocketing a pair of sunglasses from a boutique during a robbery investigation. *See* Suzanne Smalley, Detective might face felony charge, BOSTON GLOBE (Oct. 28, 2006), http://archive.boston.com/news/local/articles/2006/10/28/detective_might_face_felony_charge/. (R. 161, 427). He was later suspended for thirty days. *See* Police Commissioner's Personnel Order. PO 08-468 (Oct. 24, 2008)(R. 167). A similar suspension was imposed in response to a separate incident where Det. Keeler lied to the Anti-Corruption Division during an investigation into

[8] Three other internal affairs investigations from this time period resulted in a finding of "not sustained, indicating that the investigators were unable to prove or disprove the allegations. *See* Sergeant Daniel M. Keeler, The Woke Windows Project, https://www.wokewindows.org/officers/8220-daniel-m-keeler; BPD Rules and Procedures, Rule 109 (1983)(R.199).

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allegations that he disclosed CORI-related information to a reporter. *See* Id. (R.161). There, Det. Keeler falsely denied speaking to the reporter and was found to have violated department rules relating to truthfulness. Id. (R.161).

Det. Keeler's act of making false statements was not an isolated one. During the 2002 investigation for the case of Commonwealth v. James Bush, where the defendant was accused of murder, Det. Keeler lied in a police report about a fellow detective interviewing witnesses at the scene. *See* John Wolfs, The Many Trials of Mr. Homicide, BOSTON MAGAZINE (May 15, 2006), http://www.bostonmagazine.com/2006/05/15/the-many-trials-of-mr-homicide/ (R. 174-175). He also falsely averred, in five separate search warrant affidavits, that he had videotaped the crime scene. *See* David S. Bernstein, Shades of Keeler, BOSTON PHOENIX (SEP. 13, 2006) (R. 165). Both falsehoods were revealed at trial, where Det. Keeler admitted during cross-examination that the other detective was off-duty at the time, and that the video camera battery had died, while simultaneously contradicting himself by claiming that it had malfunctioned. *See* The Many Trials of Mr. Homicide, *supra*. *See also* Jonathan Salzman, Family in Anguish after Jury Acquits Man in Boys Slaying, THE BOSTON GLOBE (Nov. 10, 2004) (R. 180). Bush was acquitted after trial.

Not only did Det. Keeler make false statements during a murder investigation, but he also exhibited a pattern of pursuing suspects who were later exonerated or acquitted at trial. Indeed, between 1998 and 2004, at least fourteen murder suspects that Det. Keeler arrested were ultimately acquitted or had the charges against them dropped.

A case from a 1998 murder, ended in acquittal after the key witness recounted on the stand how Det. Keeler helped him clean up some pending charges, and offered to use his influence to obtain a green card. This contradicted Det. Keeler's claim under oath that he gave no assistance or promises to the witness. *See* Shades of Keeler, *supra* (R. 165).

In one 2001 investigation, Det. Keeler focused on Billy Leyden as a prime suspect in the slaying of Leyden's brother. Det. Keeler overlooked key details in the course of that investigation, including the fact that another man, Eugene McCollum, had fought with the deceased months earlier and was present in his apartment on the night of the murder. McCollum later confessed to the murder while Leyden was awaiting trial. *See* The Many Trials of Mr. Homicide, *supra*. (R. 176).

Det. Keeler was also criticized for his role in a 1994 murder investigation that led to the wrongful conviction of Donnell Johnson. There, Det. Keeler conducted a 45-minute interview of Johnson, where the 16-year-old provided an alibi for the night of the incident. This interview was not disclosed at the time of trial (R. 175). Rather, the day before the Commonwealth rested its case, Det. Keeler faxed statements from Johnson and his mother to the prosecutor. Johnson v. Mahoney, 424 F.3d 83, 87 (1st Cir. 2005).[9] Johnson was convicted of first-degree murder and served five years in prison after finally being exonerated. Det. Keeler was not disciplined, but Det. Mahoney was suspended without pay for thirty days. Were it not for a federal investigation into

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[9] Notably, Det. Mahoney, who obtained Hood's confession with Det. Keeler, was also implicated in this incident. During a pre-trial hearing, he was asked multiple times whether Johnson had provided a statement to police and Det. Mahoney claimed, under oath, that Johnson had signed a written *Miranda* waiver but then his mother wouldn't allow him to give a statement. *See* Johnson v. Mahoney, 424 F.3d 83, 87 (1st Cir. 2005). This was false.

In a subsequent civil suit, the prosecutor provided the following account about Det. Keeler's late disclosure during a deposition:

"[Mahoney and Keeler] knew that [Johnson's counsel] was going to call them as witnesses, and I explained to both of them that they were going to have to explain how the statement was turned over at this stage, at this late stage. Sergeant Keeler said to Sergeant Mahoney, 'Just say that it was inadvertent.' I then said to Sergeant Keeler that Sergeant Mahoney is going to have to explain how in the transcript of the bench trial he said that there was no statement, that the defendant made no statement. Sergeant Keeler said words to the effect, 'I'm not going to take the fall for this.'" Id.

drug trafficking that prompted a gang member to exonerate Johnson, he would still be in prison. *See* Shelley Murphy and John Ellement, DA Will Seek to Vacate '96 Murder Conviction, THE BOSTON GLOBE (March 28, 2000)(R. 186).

In a case from 2007, a defendant was acquitted after testifying that Det. Keeler manipulated him into making a false confession. *See* John R. Element, Jury Acquits Man of Murder Charge, BOSTON GLOBE (Aug. 8, 2007) (R. 182). In 2014, during another trial that involved a confession elicited by Det. Keeler, the defendant was acquitted. Jurors reportedly found Det. Keeler's questioning of the defendant to be overly aggressive and told the local media that the recording of Keeler's heavy-handed interrogation played a key role in their verdict. *See* Shades of Keeler, *supra* (R. 165).

Det. Keeler's brazen disregard for the constitutional rights of suspects in homicide cases, was also readily apparent during the prosecution of Michael Finkley, and another individual, who were arrested for a 1990 murder. During arraignment, attorneys for both defendants purposefully kept their clients out of the courtroom, away from media, to preserve a potential identification defense. Det. Keeler took it upon himself to sneak the two defendants out of the court holding cell, drive them around the front of courthouse, and parade them into the building in front of the cameras. Finkley ultimately pled guilty, while his codefendant was acquitted. *See* Shades of Keeler (R. 164).

Det. Keeler also helped convict Marlong Passley of the 1995 shooting murder of Tennyson Drakes, largely based upon on three eyewitness identifications. Passley was exonerated in 2000 when police found evidence that pointed to another man. *See* by Francis Richardson and Maggie Mulvhill, Innocents Point Finger at "Mr. Homicide" BOSTON HERALD (May 5, 2004) (R. 185).

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ii. Admission from the Suffolk County District Attorney's Office

Perhaps the strongest evidence of Det. Keeler's misconduct is the direct admission of the same from the Suffolk County District Attorney's Office. This letter, authored on December 17, 2021 by the then-acting District Attorney herself, Rachel Rollins, was sent solely to inform the defense bar about Det. Keeler's egregious misconduct. In it, she stated that "Sgt. Det. Keeler's involvement in *several matters* that my office has reviewed has raised similar concerns to those outlined in the attached letter from March this year. Please treat my inclusion of his name in this email as you would an inclusion of his name in the aforesaid letter," (*emphasis added*) (R. 194).[10] That the acting Suffolk District Attorney herself unequivocally included Det. Keeler as one of several other Boston Police detectives who participated in "at least six documented years of corruption, deceit, deception, felonies, perjury, and cover-ups," is enough in and of itself to warrant a new trial in light of the central role he had in obtaining Hood's conviction.

In an interview about the conviction and exoneration of Sean Ellis, Rollins stated, "This case has a lot of very glaring constitutional violations that have occurred...We need to look at some of these officers that were dirty, quite frankly, and see what other cases they might have touched." Tori Bedford, DA Rachael Rollins Plans to Re-Examine 'Dirty' BPD Officers in Sean

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[10] The prior letter referenced four other detectives, Brazil, Acerra, Robinson, and Mulligan. In it, she stated:

"There are at least six documented years of corruption, deceit, deception, felonies, perjury, and cover-ups collectively committed by these officers. Acerra and Robinson pleaded guilty to fourteen felonies in federal court in exchange for dismissing dozens of other documented criminal counts. The evidence of their criminality was as overwhelming as it was outrageous. Despite the extreme levels of misconduct, they served only a few years in prison. I do not know if they are collecting a pension from the City of Boston. Acerra, Robinson, and Brazil inserted themselves into nearly every crevice of the investigation of John Mulligan's murder, poisoning and infecting every piece of good police work." (R. 195).

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Ellis Case, WGBH LOCAL NEWS (August 31, 2021) (R. 186). Hood's case was not only one that Dets. Keeler, Brazil, and other "dirty" cops referenced by Rollins "touched," but one in which that they were intrinsically involved, inserting themselves into every part of the investigation. Since it was the identical task force that was responsible for the simultaneous overlapping investigation into all three homicides, the same "glaring constitutional violations" that occurred to Ellis also occurred to Hood.

iii. Allegations of Impropriety by David Lewis, Deputy Chief of the Suffolk County Integrity Review Bureau

During the post-conviction discovery phase of this case, the defense inquired into the specifics of Rachel Rollins's December 17, 2021 letter to the defense bar to enable them to conclusively identify what "several matters" the Suffolk County DA's Office had reviewed that triggered Rollins to send the written notice about Det. Keeler's misconduct. The Commonwealth claimed that it was completely unaware of the letter authored by Rollins until it was attached to the defendant's motion. ADA Hickman was ordered to inquire of certain individuals carbon copied on the letter, specifically ADA Donna Patalano, who was the acting General Counsel, and ADA David Lewis, the acting Chief of the Integrity Review Bureau during the Rollins administration, and acting Deputy Chief at the time of the inquiry.

ADA Lewis apparently told ADA Hickman that although he had several conversations "with defense organizations regarding the general outlines of how to address systemic misconduct in cases in Suffolk County," and that "defense attorneys would bring up Sgt. Det. Keeler and other officers would be mentioned, no individual officer was ever selected or targeted" because the conversations were general in nature. According to ADA Lewis, "it sounded to [him] that defense lawyers mentioned Sgt. Det. Keeler to DA Rollins frequently so that his name became something of a shorthand for 'police misconduct.'" He further contended that the only case involving

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misconduct where Det. Keeler was directly involved was Shaun Jenkins. The other cases, Ellis and Qualls,[11] both of which were overturned, only involved Det. Keeler peripherally (R. 191).[12]

That the current acting Deputy Chief of the Suffolk County Integrity Bureau is aware that Det. Keeler has been 'flagged' by defense attorneys so frequently that it has become a shorthand for police misconduct certainly weighs heavily in support of Hood's claim that the propriety of Det. Keeler's involvement in his case is highly suspect. This, coupled with the fact that the Integrity Review Bureau has reviewed at least three cases (Qualls, Ellis, and Jenkins) involving Det. Keeler, and each has been overturned, is sufficient to cause one to seriously question the integrity of a conviction for any case in which he was involved.

What was notably absent from ADA Lewis's response to ADA Hickman's inquiry is the fact that prior to his tenure at the Integrity Review Bureau, when he was a defense attorney, he personally accused Det. Keeler of misconduct. Specifically, on May 31, 2012, Attorney Lewis authored a complaint to the BPD requesting an investigation into Det. Keeler based upon his alleged dishonestly in his role in Commonwealth v. Ricky D. McGee, Commonwealth v. Clemente, and "other cases" (R. 219-220).

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[11] Ronald Qualls's conviction for a 1992 double homicide was vacated based on DNA evidence that supported that Qualls was not the individual who committed the shooting. Report: DNA Evidence used to Overturn Double Murder Conviction, WCVB 5 Boston (February 26,2020)(R. 536-537)

[12] The defendant disputes ADA Lewis's claim that Det. Keeler was only peripherally involved in Ellis. Det. Keeler was not only present at but was in charge of the crime scene in the Walmart parking lot, was personally responsible for choosing the fifty man police task force that would investigate the crime, interviewed crucial witnesses like David Murray (Ellis's uncle) and Victor Brown (percipient witness at Walgreens who approached Patterson's vehicle, and asked Kirk if she was "okay"), and took the report from Det. Foley (a/k/a "The Foley Report" referenced in Ellis relative to a potential third party culprit)(R. 103, 121-125). He also obtained the search warrant to search the field where the murder weapons were ultimately found, led the search to recover the same and obtained the Consent to Search from the property owner that abutted the field (R.426).

With respect to Commonwealth v. Ricky D. McGee, Attorney Lewis, who represented the defendant on appeal, alleged that Det. Keeler had "threatened and intimidated" a key witness who had appeared at trial to testify for his client. According to court documents, when this witness was seen by Det. Keeler in the hall of the courthouse, Det. Keeler approached him, pulled him aside into a private room, and, after learning the witness was going to admit that a gun involved in the case was his, told him he would "more than likely" be charged with possession, and recommended that the witness speak to an attorney (R. 203). That witness immediately sought advice of counsel and invoked his Fifth Amendment right not to testify (R. 205). McGee was found guilty of first-degree murder.[13]

In his motion for new trial, Attorney Lewis accused Det. Keeler of "admit[ing] under oath to lying in court documents at least three times during the James Bush case," exercising "poor judgment," having a "disregard for truthfulness, and a lack of veracity [that] cost him his job in the BPD's homicide division." (R. 206). Attorney Lewis claimed that Det. Keeler's demeanor toward the defendant's witness in McGee was "hostile," that Det. Keeler purposely delivered his threat to the witness in private, and that "Keeler's interference with a defense witness violated the defendant's fundamental constitutional right to present a critical, non-cumulative witness in support of his claims." (R. 205, 208, 211, 217).

In support of both his letter to the BPD, and motion for new trial in McGee, Attorney Lewis also referenced Commonwealth v. Clemente, attaching a two-page trial transcript from

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[13] Attorney Lewis's motion for new trial was denied, as the motion judge did not agree that Det. Keeler's conduct rose to the level of intimidation or that the testimony of the missing witness would have made a real difference. The judgment was affirmed on appeal. Commonwealth v. Ricky D. McGee, 467 Mass. 141 (2014).

Clemente where defense attorneys also accused Det. Keeler of intimidating witnesses who were under subpoena by the defendant. In it, Attorney Laurano complained to the judge,

"He is examining the witnesses, Your Honor. Detective Keeler is outside intimidating witnesses that we have under subpoena. He is sting next to them. He's putting his arm around them. He's telling them, if you don't want to testify, you don't have to testify...He's ordering our investigators to stay away from people. I mean, you know, it's scaring the hell out of people out there. I just want to put that on the record." (R. 250-252)

iv. Commonwealth v. Shaun Jenkins

Jenkins was convicted of first-degree murder for the shooting death of his cousin. His motion for a new trial was allowed by the Honorable Kenneth W. Salinger on December 20, 2021 (R. 249). Det. Keeler's conduct was a crucial factor in Jenkins being awarded a new trial. Judge Salinger found that Det. Keeler, "who was the lead investigator in the case, never told prosecutors, and thus the Commonwealth never informed Jenkins, that the detective had interviewed a key witness and later paid him $100 on the day he decided to waive his right to remain silent and testified to the grand jury." (R. 222). Judge Salinger also found that Det. Keeler "kept electronic notes that he did not share with the prosecutors and thus was not produced to defense counsel." (R. 240). Jenkins is yet another example of Det. Keeler's underhanded actions that, over the years, served to unfairly stack the cards in homicide cases in the Commonwealth's favor. These actions place the question of whether Det. Keeler's actions were proper in Hood's case squarely in play.

v. Commonwealth v. Mickayla Perry, Allen Ivey, Samuel Patrick

On March 12, 1993, the Honorable Constance M. Sweeney allowed the defendant's motion to suppress evidence found in the defendant's apartment, based on an illegal search led by Det. Keeler. Det. Keeler's version of the events, all of which were provided under oath, were completely discredited by the evidence, firmly supporting another instance where he lied under oath, and attempted to circumvent a defendant's constitutional rights in his efforts to obtain a conviction. The relevant portion of Judge Sweeney's ruling is as follows:

"In the application for the warrant, Keeler states that he was the recipient of the informant's tip and that he observed [the defendant] exiting the target location before the police stopped his vehicle. The officer now acknowledges that those statement[s] were not true.

Sergeant Keeler did not have probable cause to make entry into the subject apartment. I specifically reject his testimony that when the door to the apartment opened he observed Samuel Patrick with a gun. This claim of Keeler's is not credible for several reasons. First it was physically impossible for him to see Patrick from the vantage point he claims. The Sergeant testified that as the door swung open he saw Patrick standing near a living room door jamb with a gun in his hand or reaching for a gun in his waistband. Photographs were offered which clearly show that the only thing the Sergeant could have seen as he stood behind and to the left of Patterson as the door opened was a wall. One would actually have to be inside the apartment before they could see an individual standing in the location Keeler claims Patrick was standing. Moreover, while Keeler claims he yelled to the other officers that Patrick had a gun before Keeler burst through the door, the testimony of the other officers do not support that claim. One of the officers does remember Keeler yelling as he entered the apartment but could not recall what Keeler was actually saying. Moreover as Patrick sprang through the closed window several officers were almost directly in the fall line. Those officers, who immediately cased Patrick, never saw a gun in his hand or saw him discard a gun in flight. Indeed a subsequent search of the area did not uncover a gun. Neither was any firearm found within the apartment.

It is clear from the evidence that the officers led by Sergeant Keeler went to 36 Ellington Street for the sole purpose of conducting a warrantless search of the subject apartment...Sergeant Keeler asks this court to believe that because he knew Patrick was in the apartment and had a reputation for violence, concern for the safety of other occupants compelled him to stand armed watch in the hallway of this building. This explanation is specious." (R. 290-292).

B. Detective John Brazil

i. Dets. Brazil's problematic history with the BPD led to a federal indictment against him.

Det. Brazil also played a key role in Hood's conviction. Specifically, he was among the first on scene, was first to interview Ma Trez, the only eyewitness to the shooting, at Boston Children's Hospital in the hours thereafter, and arrested Hood at his girlfriend's apartment days after the murders (R. 160). He also interviewed David Murray (who was first to provide Hood's name as a potential suspect), conversed with, and interviewed members of the Kirk/Brown family many times, interrogated Sean Ellis about his involvement in his cousins' death, and interrogated

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Terry Patterson when he admitted that Kirk was in his car when Mulligan was shot (R. 7, 16, 44-46, 261). Finally, he assisted Dets. Keeler and Mahoney in obtaining Hood's confession, as it was he who set Hood's interrogation into motion, claiming he received a call at home while off duty asking him to return to the station because Hood changed his mind about speaking to police and had allegedly personally requested to speak with him (R. 160)

Det. Brazil officially resigned from the Boston Police Department on March 10, 1999, with an indictment pending in Federal Court (R. 425). Ultimately, he received immunity for his willingness to testify against Dets. Accera and Robinson. Det. Brazil admitted to years' worth of corruption with his fellow detectives, to falsifying information on affidavits in support of search warrants to enable he and other members of the BPD to enter the residences of drug dealers in order to rob them, to committing armed and unarmed robberies, to stealing money from crime scenes, to lying in investigations, to threatening suspects, to making deals with criminals and their lawyers, to reporting less money than was seized during drug arrests, and to substituting different money than that seized if it became necessary to produce. (R. 312-326). *See* Commonwealth v. Ellis, 475 Mass. 459, 464 (2016); United States v. Murphy, 193 F.3d 1 (1st Cir. 1999).

In fact, former Suffolk County District Attorney Rachel Rollins issued a press release on January 6 2022, stating, "[t]he corruption of John Brazil continues to harm people in the Suffolk County still some three decades later." (R. 431). She continued, "When the Commonwealth – which includes law enforcement – lies, cheats and steals, the Commonwealth should not be able to benefit from those unconstitutional, unethical, or criminal acts." (R. 431). The Commonwealth should not benefit here from Det. Brazil's unconstitutional, unethical and criminal acts.

ii. Commonwealth v. James Lucien

James Lucien was convicted of first-degree murder for killing Ryan Edwards in 1995 and was sentenced to life without parole. The Suffolk County District Attorney's Office "found that

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key evidence went missing, crucial witnesses were coached or ignored, and 'significant evidence of police misconduct and perjured testimony,'" resulting in the conviction being overturned. The defense argued that the jury didn't get to hear critical evidence about Det. Brazil's misconduct, and that the misconduct destroyed the integrity of the investigation. Andrew Ryan, He Was Sent to Prison by a Corrupt Boston Police Detective. Now, 26 Years Later, Prosecutors Want Him Free, THE BOSTON GLOBE (November 6, 2021) (R. 254, 258).

In Lucien, Det. Brazil claimed that he found a pager the night of June 25, 1994, when the victim was shot and killed. Nearly three decades later, it was discovered that the pager in evidence did not match the one in the crime scene. Prosecutors now say Det. Brazil also blatantly coached a witness. Then acting District Attorney Rachel Rollins admitted in an October 20, 2021 filing that Det. Brazil "likely committed perjury," as he reported recovering only $16 during Lucien's arrest, and the bills he produced had different serial numbers than the cash in crime scene photographs. Det. Brazil also claimed to have lost the victim's clothing, which would have likely contained gunshot residue (R. 253-260)[14]

Det. Brazil's unconscionable conduct poisons every part of any investigation in which he was involved, including Hood's. The same reasons Det. Brazil and other members of the BPD were in a rush to solve the Mulligan murder, i.e., to prevent others from discovering their own misconduct, is applicable to the Kirk/Brown murders since the cases were inextricably intertwined. The viability of Det. Brazil's claim that after being arrested on an unrelated warrant, Hood suddenly had an epiphany two days later and personally requested Det. Brazil so he could confess to a double homicide is highly questionable. Certainly, had Hood known of Det. Brazil's

[14] Interestingly, according to the Criminal Docket, ADA David Lewis, of the Suffolk County Integrity Review Bureau, who assented to the defendant's motion for new trial, had also previously represented Lucien as a defense attorney (R. 330-333).

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misconduct at the time he was contemplating a plea deal, where he was required to weigh the likelihood that jurors would find his version of the events more credible than the version set forth by Det. Brazil, he would have chosen differently (R. 539-541).

III. The newly discovered evidence and *Brady* material taint the strongest evidence against the defendant - his confession - because it was elicited by Dets. Keeler and Brazil.[15]

The newly discovered evidence, particularly concerning two of the three detectives responsible for obtaining Hood's confession, is significant in and of itself to taint the trustworthiness and reliability of Hood's confession. Undoubtedly Hood's confession was the strongest piece of evidence against him. Even ADA Leslie O'Brien acknowledged that the confession, obtained by Dets. Keeler, Brazil, and Mahoney, was "the single most important factor leading to [the Commonwealth's] success" (R. 524).[16] The newly discovered evidence and *Brady* material, coupled with the other factors that made Hood particularly vulnerable to coercion, weigh heavily in Hood's favor, as it would have provided him with a viable argument to challenge the veracity and strength of this key evidence.

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[15] Hood concedes that matters previously litigated cannot be re-litigated in a subsequent motion for new trial, and does not do so. With respect to the impropriety of Hood's interrogation, he previously argued that detectives violated his right to counsel because he already had an attorney on another case when he was interrogated. The Appeals Court affirmed the denial of his motion for new trial. *See* Commonwealth v. Hood, 14-P-583 (February 13, 2015)(*unpublished decision*). He has never previously argued that he was coerced into a false confession by corrupt detectives employed by the Boston Police Department, or that had trial counsel and Hood been aware of the newly discovered evidence and *Brady* material, Hood would never have pled guilty.

[16] On July 21, 1995, ADA Leslie O'Brien wrote a letter to the Police Commissioner stating, "You should be aware that the single most important factor leading to our success was the defendant's confession, which was obtained by Sgt. Dets. Daniel Keeler and William Mahoney of the Homicide Unit with the help of Det. John Brazil, also of the Homicide Unit. The confession was not only remarkably detailed and complete, but was obtained in such an exemplary manner as to be virtually unassailable in court." (R. 524).

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A. <u>The manner in which the interrogation was conducted reeks of impropriety</u>.

On October 1, 1993 at 2:00 a.m., two days after Kirk and Brown were killed, several detectives, which included Dets. Keeler, Mahoney, Brazil, entered the Brockton apartment Hood shared with his girlfriend, Nicole Johnson, and arrested him on an unrelated warrant (R. 160). The unrelated warrant for which Hood was initially arrested involved the non-lethal shooting of Glenn McLaughlin at a park back on June 15, 1993 (R. 159-160).[17] Hood was booked in Brockton, then released to the Boston Police and brought to area E-5 where he was held for two days. According to Det. Mahoney, Det. Brazil had provided Hood with his business card in case Hood "had any questions" (R.160). Det. Brazil then claimed that, on October 3, 1993, he was called at home and informed that Hood had asked to speak with him personally (R. 160). Allegedly at Det. Brazil's behest, Dets. Keeler and Mahoney went to the station, brought Hood upstairs for questioning (R. 160).[18]

Hood was initially questioned about all three homicides, i.e., Mulligan, Kirk, and Brown (R. 539-541). His initial interrogation was not recorded.[19] The second interrogation, which was

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[17] McLaughlin was shot in the leg by the defendant during a dispute about McLaughlin's friends allegedly jumping Hood on a prior occasion at McLaughlin's request (R. 275).

[18] The defendant disputes that he ever asked to speak with detectives, was ever provided with Det. Brazil's card, or was told to call him if he had any questions (R/ 539-541).

[19] This appeared to be the standard practice of several Boston Police homicide detectives (specifically Dets. Keeler, Brazil, Mahoney, and Harris) during this era. *See* Kevin Cullen, A Hard Charging Cop Retires, THE BOSTON GLOBE, February 24, 2016 ("There was a case when defense attorneys seized on Keeler and Harris for not turning on a tape recorder in the initial part of an interview, in which a teenager implicated others for the 2002 murder of 10-year-old Trina Persad. Defense lawyers tried to suggest Keeler and Harris didn't turn on the recorder until the witness gave them the scenario they wanted.")(R. 338); *See also* <u>Commonwealth v. Woodbine</u>, 461 Mass. 720,732 (2012)("[Det. Keeler] did not make notes of the initial interview, and, by his own choice, it was not recorded.").

recorded, did not include the intricacies that customarily support the existence of a lawful, non-suggestive, and non-coercive confession. In it, Det. Keeler confirmed the fact that Hood had already been provided with his *Miranda* warnings, had waived them, and had signed a written *Miranda* waiver.[20] Because the first unrecorded interrogation was essentially a rehearsal for the second recorded interrogation, it failed to capture spontaneous statements made by Hood, his raw emotion - including whether he expressed excitement, confusion, or remorse over the accusations - and his initial reaction to questions posed by his interrogators. Markedly Massachusetts courts have agreed that spontaneous utterances are far more reliable than rehearsed statements. *See* Commonwealth v. King, 436 Mass. 252, 254 (2001)("A statement is admissible under the spontaneous utterance exception to the hearsay rule if the proponent shows that the statement was made under the influence of an exciting event, before the declarant had time to contrive or fabricate the statement, and that the statement tended to qualify, characterize and explain the underlying event."). Most importantly, the second interrogation failed to solidify how any of the details about the shooting were relayed by Hood in the first instance, and, most importantly, whether any of those details were suggested or provided by detectives, or whether Hood was ever coerced, threatened, or promised anything to entice him to confess.[21]

The existence of a 'dry run' interrogation is not only problematic, because it is completely lacking of spontaneity, but it also reeks of being unduly suggestive. Indeed, as false confession expert, Alan Hirsch, J.D., explains, "Absent a recording of the entire interrogation, it is difficult if

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[20] Of note, in Woodbine, *supra,* Det. Keeler also provided the defendant with *Miranda* warnings during a similar 'pre-interview' unrecorded interrogation, claiming to have recited those warnings from memory. When asked on cross-examination at the suppression hearing to recite them from memory, Det. Keeler failed to adequately provide complete *Miranda* warnings Id. at 727.

[21] During the recorded interrogation, Det. Keeler acknowledged that he and Det. Mahoney had promised Hood that they would try to get his son in to see him (R. 284-285).

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not impossible to know what tactics were used to revolve discrepancies between the defendant and law enforcement as to what transpired prior to the confession. In many cases of proven false confessions, the confession contained some accurate details – often supplied by law enforcement during non-recorded interactions preceding the confession." (R. 527-536).

In the recorded interrogation, Det. Keeler, repeatedly referenced things in the past tense, telling Hood they needed to "go back" to the information provided in the unrecorded interrogation, asking Hood, "Did you completely understand everything that we've [already] gone through here tonight?" (R. 263). He also asked, "Am I safe in saying that during this whole conversation other than when you broke down and started crying and were quite emotional neither myself or Sergeant Mahoney have raised our voices in any manner to you tonight?" (R. 264). Haplessly missing is evidence of what Hood and the detectives had "gone through," and why, how, or if Hood previously "broke down and started crying" during the unrecorded interrogation. Had Det. Keeler intended Hood's interrogation to be completely transparent, he, as an experienced homicide detective, would have been sure to capture everything Hood said to prove to any factfinder in the future that it was completely voluntary.[22] It is indeed curious why a rehearsal or 'dry run' was par for the course whenever Det. Keeler was involved in interrogating a suspect for murder, and why he chose to do so in this case when Hood was already allegedly very eager to speak with him and Det. Brazil. In reality, it is only from "a complete recording of the entire interrogation that produced such a statement or confession, [that a factfinder] can evaluate its precise contents and

[22] Although this case pre-dated Commonwealth v. DiGiambattista, 442 Mass. 423 (2004), this is a textbook example of why the SJC felt the need provide jurors with an instruction informing them that they should consider any unrecorded confession "with great caution and care." Id. at 447–448. *See also* Woodbine, *supra* (first degree murder conviction vacated and new trial awarded where SJC found that Det. Keeler's testimony regarding the details of the defendant's first unrecorded confession were not from his memory but instead, provided after refreshing his recollection from a subsequent recorded statement, which had previously been suppressed).

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any alleged coercive influences." DiGiambattista, *supra* at 739. Here, considering Dets. Keeler and Brazil's well-earned reputation for misconduct, dishonesty, and coercion, the impact of Hood's confession at any trial would be minimal with the new and previously undisclosed evidence.

Not only was the interrogation problematic because it was rehearsed, but Dets. Keeler and Mahoney relied heavily on leading questions. These questions suggested the answer as fact and required only a "yes" or "no" response from Hood.[23] Additionally, at one point, Hood clearly asks the detectives whether they wanted him to say something on tape (R. 281).[24] Finally, what is perhaps the most glaring evidence that Hood had been coached occurred during his recollection of the moments before he allegedly shot Kirk, when he stated that Kirk went "to the door, I guess to open it, still saying I'm not getting nothing. You know, 'You're not going to get nothing.' *And that's, when I heard that I just shot her.*" (*emphasis added*)(R. 273).

A final troubling detail about Hood's confession is that conspicuously missing is standard police protocol of having the target of an interrogation repeat his story several times to test verity, consistency, and possible contradictions. Instead, in this interrogation, Dets. Keeler and Mahoney prompt and lead Hood through the entire statement only once. Then, they stop recording. Hood is notably, never asked to repeat his story, nor do they query for contradictions, or plumb the inconsistencies and implausibilities in Hood's rendition.

B. Hood's mental health issues, youth, and lack of education made him particularly vulnerable to coercion by police.

[23] For example, Det. Keeler asked, "So you're not intimidated at all by the process, right?" ("No.") (R. 264); "And at some point in time did Celine take a gold chain from you?" ("Yes.")(R. 266); "And you go up to an apartment building. Am I fair in saying it's a brick apartment building, multi units?" ("Yes.")(R. 270)'. "Am I safe to say she isn't going to give [the chain] back to you?" ("Yes.) (R. 271).

[24] Hood asks, "No, cause, you know, at the time,...to say it on the tape?" (R.281).

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While the newly discovered evidence and *Brady* material should, on its own accord, result in the award of a new trial, there is ample reason for this Court to find that Hood was particularly vulnerable to coercion by Dets. Keeler and Brazil. For instance, Hood had been a victim of physical abuse, and had suffered from PTSD, trauma, and brief psychotic episodes. Prior to trial, Hood was evaluated by Carol J. Ball, Ph.D., a forensic psychologist. He opined that Hood had confessed because of a longstanding moral code that he would not tell on anyone, coupled with a naive belief that he could never be convicted for a crime he didn't commit because there would be no evidence against him. Additionally, False Confessions Expert Alan Hirsh, J.D., relying on key factors of the interrogation at issue in the present case, opines that "Hood's confession bears many indicia of a false confession and is highly unreliable." (R. 527-536). These included that Hood was only 18 years old at time of interview and had, at most, a ninth-grade education,[25] and had reported to detectives that he'd been hearing voice since he was ten years old, and that Hood's so-called confession did not generate new evidence (R. 527-536).

By all accounts, Hood grew up in a violent household where his mother was regularly beaten by his father. After one severe fight, his mother fled to Florida with family, but his father eventually followed them there and reconciled with his mother. Hood reports that following another violent incident, he ran and told his uncle that his father was beating his mother. After his uncle intervened and stopped the assault, his mother was beaten even more severely. Thereafter, she came into his bedroom and told him, "It's good to try to help people out, but don't tell on people…it only makes things worse." This was his mother's last words to him, as later his mother

[25] The last grade Hood completed was the 6th grade. He dropped out of school in the 7th grade but was forced to return to school. Instead of placing him into the 7th or 8th grade, he was enrolled him into the 9th grade, where he dropped out for good (R. 539-541).

drowned in a swimming pool. Hood remembered his mother's last words to and honored them by not telling on his father, who Hood suspects of foul play in his mother's murder. Closure could not be had regarding his mother's death, as Hood was not allowed by his father to attend her funeral to say goodbye (R.437-446).

Hood's father eventually re-married a woman who was physically abuse toward Hood. During this time, he began having blackouts, dizzy spells, and hearing voices. Eventually Hood was able to convince his father that his new wife was abusing him, and his father moved the family away from her to Massachusetts (R. 437-446).

Hood did poorly in school and began getting into trouble, eventually ending up in DYS custody. In April 19, 1991, just two years before Kirk and Brown were shot, Hood was admitted to Arbour Hospital because he was hearing voices that were telling him to kill himself. He was also drinking excessive amounts of alcohol, and was reportedly very angry at his father for pretending like nothing at all had happened to his mother. In his psychological evaluation on April 29, 1991, Stuart Carter, PhD, indicated that while Hood was not overly psychotic, there was evidence of a "developing psychotic process." Testing also revealed intense emotional turmoil and a mild neurological impairment to the right hemisphere of his brain. Hood left the hospital against medical advice and without medication or treatment on April 29, 1991 (R.437-446).

Dr. Ball opined that Hood experienced brief psychotic episodes which were characterized by fluctuating periods of disorganized and bizarre thinking, which may have been a preliminary phase to a more extended schizophrenic illness, such symptoms are characteristic of Schizoaffective Disorder. She also opined that Hood had PTSD from possibly witnessing his father abuse and murder his own mother, and from suffering personal abuse at the hands of his step-mother. He opined that, "[t]he one belief that [Hood] clings to is to follow the rule his mother told

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him" and that Hood displayed a "child-like naïveté that somehow the truth will come out and he won't be blamed for something he did not do." Finally, Dr. Ball opined that "[Hood] is a troubled and unstable young man, who in spite of his history of acting out, does not present with the typical street-wise machismo, or hoodlum facade, but rather with an intense sadness and simplistic, and unrealistic view of the world, which makes him easy prey to those who would take advantage of him." (R. 441-446).

C. Numerous statements made by Hood do not match the forensic evidence.

There is significant evidence that supports that Hood's confession was contrived and that any details he did know were either provided to him during the 'dry run' or obtained from a second-hand source.[26] These inaccuracies that suggest a lack of truth, or first-hand knowledge about the Kirk/Brown murders are plentiful. For instance, despite Det. Keeler's attempt to coach Hood into agreeing that "Tracy put her hand up" when he shot her, because the evidence suggested that Brown sustained a through-and-through bullet wound in her forearm indicating defensive posture, Hood did not recall this noteworthy fact (R. 276-277).

Additionally, the motive for the killing is belied by the evidence. According to Hood, he killed Kirk because she refused to give him back his gold chain and he killed Brown because she witnessed it. However, Hood told police Kirk paged him from her apartment, answered his phone call when he responded to her page, provided Hood with her new address, and arranged to meet him there (R. 268-269). Why would Kirk invite Hood over simply to tell him that she was never going to give him his chain back?

[26] Since Hood was not arrested until several days after the shooting, there was ample time for him to learn of the details of the same from news media, mutual acquaintances, and/or the real killer(s).

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Hood's version to detectives about how Kirk obtained the chain, and her willingness to return it to him, is also in complete contradiction to the evidence. Hood told detectives that the day he shot Kirk, he had simply asked her to return his chain and she told him multiple times, "You're not going to get nothing," before "going off like, 'You can't getting [sic] nothing. You're not having nothing. You're not getting nothing back" (R. 272-273). According to Hood, his chain had been on his dresser and Kirk took it while he was sleeping without his knowledge or consent when she stayed the night (R. 267-268). Nikki Coleman completely refutes this story. She was personally present when Kirk asked Hood to wear the chain and Hood told her, "Yeah, you can wear the chain." (R. 347,447). Thereafter, Coleman was a witness to Kirk offering Hood his chain back on three to four different occasions (R.448-449). Even during a telephone conversation with Kirk on the day she was shot, Coleman overheard Kirk say to Hood, "You can have your chain. Just wait and I'll give you your chain." (R. 343). In response, Hood, seemingly unphased, simply told her he was leaving and would come back and get it later. (R. 343).

Kirk did not have the chain on her person or in the apartment at that time of her murder. If the motive for her murder was the retrieval of the gold chain, killing her at a time when she did not have it on her person or nearby would defeat, not serve, such a motive. Interestingly, when Sean Ellis was called in for questioning about his cousins' murders, he admitted he was in possession of the chain, which was subsequently provided to police by his attorney (R. 336).

Hood told detectives that he shot Kirk and Brown twice each, and that he shot Kirk "in the back of the head." (R. 273-274). However, only three bullets, not four, were found; further, autopsy reports indicate that Kirk was shot on the side, not the back, of the head; a very significant inconsistency (R. 340). Presumably, the true culprit would have recalled whether he shot Kirk in

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the side, not the back, of her head. He also would have known whether he fired the gun three or four times.[27]

Hood claimed that immediately after the shooting, he was pushed out by Brown's son (R. 276-277). Not only does this conflict with Ma Trez, who told police that he was in the bathtub when his mother was shot (see video filed on zip drive), but it is also inconsistent with the evidence discovered at the crime scene which suggests that the shooter stuck around and tried to clean up himself and/or the crime scene (R. 35-37).

Hood not know the exact time he went to Kirk's apartment to shoot her, or even the time of day (R.270). Certainly murdering two people would have been a memorable experience for Hood had he in fact committed the crime, so as to enable him to recall whether it was day or night. He also told police that he went to Kirk's residence one time that day, during which he shot her and Brown (R.267-270). Contrast Coleman who was on the phone with Kirk earlier in the day when Hood was there and heard him leave, telling Kirk he would just get the chain later (R. 268). If in fact Hood shot Kirk and Brown, he would have had to return to their apartment a second time that day, a fact he omitted entirely when he was interrogated.

Finally, Hood gave a nonsensical story about finding the murder weapon on the train tracks in Mattapan, and having his girlfriend return him there after the shooting to return it to the same place (R.279-280). It was completely undermined by his girlfriend's denial of this event ever

[27] There were four bullet wounds on the bodies of the girls but only three bullets recovered by the medical examiner (R.11,400-424). Because one wound was a 'through and through' to the arm of Brown's arm, it was likely that a single bullet went through Brown's arm, while she was in a defensive posture, before hitting her in the head (R. 413-424). If, in fact, there were only three shots fired, Hood's claim that he picked up two casings was also false as two casings were found at the crime scene (R. 11,274).

occurring and by the fact that when Hood took police to the location, there was no firearm there (R. 10-11).

IV. The newly discovered and undisclosed evidence deprived the defendant of a potential *Bowden* defense.

Evidence is clearly exculpatory and must be produced if it would strengthen a defendant's *Bowden* defense that the police investigation was inadequate. *See* Commonwealth v. Holbrook, 482 Mass. 596, 611 (2019); Commonwealth v. Sullivan, 478 Mass. 369, 381 (2017)(evidence that could bolster *Bowden* defense). Here, the newly discovered and undisclosed evidence also supported a *Bowden* defense for the defense pursuant to Commonwealth v. Bowden, 379 Mass. 472 (1980)(permissible defense to allege insufficient police investigation). Had Hood known about the egregious misconduct by the homicide detectives who investigated his case, and of Det. Mulligan's own misconduct, he could have used that evidence to attack the adequacy of the investigation. Without this evidence, Hood was deprived of a substantial *Bowden* defense thus justice has not been done.

When Det. Keeler testified at Ellis's hearing on his motion for new trial, he admitted under oath that he did not make any serious efforts to investigate suspects other than Ellis (R. 135). Certainly, the same holds true for Hood. As Judge Ball stated in Ellis, detectives from the BPD were eager to close the investigation as quickly as possible because "they needed to prevent others from finding out that they and Mulligan had been engaging in illegal activities." (R. 144). This resulted in an inadequate police investigation, stymied by these detectives due to their conflict of interest. As such, the same conflict of interest found by Judge Ball in Ellis is applicable here. Commonwealth v. Tabor, 376 Mass. 811, 819 n.3 (1978)(Defendants should receive a fair trial where there is a danger that the district attorney who prosecuted them may have been influenced by private interests); *See also* Ball's Decision in Ellis (R.146-147).

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These corrupt detectives were involved in nearly every aspect of this homicide investigation that led to Hood's prosecution. Commonwealth v. Manning, 373 Mass. 438,444 (1977)(dismissing indictment where "officers' misconduct was so pervasive as to preclude any confidence assumption that proceedings at a new trial would be free of the taint"). *Compare* Commonwealth v. Campiti, 41 Mass. App. Ct. 43, 66 (1996)(newly discovered evidence that investigating officer engaged in unrelated wrongdoing did not warrant a new trial where officer had only a "secondary role in the...investigation and a very minor role in the trial."). Even without the strong third-party culprit evidence, the evidence of corruption by key detectives in charge of this investigation would have played an important role in both Hood's decision to tender a plea and in any verdict had he gone to trial because it was powerful *Bowden* evidence.

V. The undisclosed and new evidence clearly would have made a difference in Hood's decision to tender a plea because there was a viable third party culprit defense.

Had Hood opted to go to trial, a conviction against him was hardly a foregone conclusion making the newly discovered undisclosed evidence significant. Indeed, there was very strong evidence that a third party culprit killed Kirk and Brown, a theory that the Commonwealth fought every step of the way. The Commonwealth sought to exclude evidence that whoever killed Det. Mulligan may have had a motive to kill Brown and Kirk, claiming it would mislead jurors (R. 449-453). On the contrary, evidence of a third-party culprit was abundant, but Hood was never aware of it because it was either never provided to his attorney or his attorney was precluded from, or failed to, disclose it to him. *See* Commonwealth v. Tirrell, 382 Mass. 502, 510 (1981)(in plea bargaining context "defendant's fond hopes for acquittal must be tempered by his understanding of the strength of the case against him, his prior record, and the completely unknowable reaction of the trier of fact").

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A. **Sean Ellis**

Sean Ellis was a viable third-party culprit for several reasons, the first reason being the most obvious; that Kirk had been in the back seat of Patterson's vehicle and witnessed the Mulligan shooting.[28] In her Grand Jury testimony for the Ellis/Patterson case, Coleman stated:

"When the detectives came, they just started telling me some of this stuff, what happened, like part of the story. That's when I started putting it together, like the cop got killed and then two days later Celine and Tracy got killed. And then they just started telling me about Craig Hood. And that's when I just knew something - - Celine had something to do with that. Because two days later she was dead." (R. 392).[29]

Two days before her death, Kirk told a male friend, Prentiss Douglas, that she was at the scene of Mulligan's murder (R. 17). He reported that on that day, she was "very nervous, distant, and not herself" (R.17). The next day, she told Douglas that she saw one of the men she was with that night at Douglas's repair shop when his Volkswagen was being repaired (R.17).[30] On the very same day she died, at approximately 4:00 - 4:30 p.m., she told Douglas that she didn't "want to go to Mattapan," referring to her Oakcrest apartment (R. 18). Approximately a half hour later, when she had arrived at her apartment, she called him and told him that her cousin, Sean Ellis, was

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[28] It is undisputed that Kirk was present during the Mulligan shooting as she told both Prentiss Douglas and Nikki Coleman that she witnessed the same (R.17-18, 376-377, 387-388,447-449). Additionally, David Murray told Dets. Brazil and Mahoney, and Terry Patterson told Det. Brazil, that Kirk was present inside the vehicle during the same (R.459-465,522). Additionally, Victor Brown, saw Patterson's vehicle outside his house on American Legion Highway, near the Walgreens where Mulligan was murdered. He approached the vehicle, saw a black female in the backseat and asked her if she was okay (R.97,522). Finally, Adolpho DeSalvo, a Boston Globe paper deliveryman, observed Patterson's vehicle, at that time inhabited by three people, whom he described as a black man, driving, a black man in the front passenger seat, and a black female in the rear passenger seat (R.97).

[29] Whether it was a result of the Protective Order that prohibiting Hood's trial attorney from interviewing certain witnesses, or whether it was overlooked, Nikki Coleman, who was a crucial witness in Hood's case, was never interviewed by trial counsel or his investigator (R. 458).

[30] Patterson had removed the tint, "bra," and plates on his Volkswagen after Mulligan was shot (R.501,521,525-526).

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coming to pick her up (R. 18). That was the last time he ever spoke to her. That she was the only eyewitness to Mulligan's shooting gave Ellis and Patterson a significant motive to want her eliminated.

The only known eyewitness to his mother's death, Ma Trez, was interviewed several times. On September 30, 1993, Ma Trez made the following statements during his interview, directly inculpating his Sean Ellis:

Q.:	"Who shot mommy?"
Ma Trez:	"Sean" (@7:30 min)[31]
Ma Trez:	"Seany [or Seanshe] did it." (@7:20)
Ma Trez:	"Shot up the mom
Q.:	"Where were you?"
Ma Trez:	"I was taking a bath" (@ 8:00)
Q.:	"Who shot your mommy?"
Ma Trez:	"Sean."
Q.	"What did Sean use to shoot?"
Ma Trez:	"He just got a gun." (@11:20).
Q.:	"When Sean shot mommy, was he mad, sad?
Ma Trez:	"He was mad." (@26:00).
Ma Trez:	"Sean is mean."
Q.:	"Who is mean?"
Ma Trez:	"Sean."
Q.:	"Is Sean good or bad?"
Ma Trez:	"He's bad."
Q.:	"What makes him bad?"
Ma Trez:	"He shoot from the gun." (@30:20)
Q:	"What did you see?"
Ma Trez:	"He shoot the gun."
Q.	"Did you see Sean shoot the gun?"
Ma Trez:	"Yeah." (@35:10)

[31] This video has been provided on a separate zip drive filed with the court with this Memorandum of Law.

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Addionally, Ellis was a feasible suspect because of information, initially provided in confidence to police by Ellis's own uncle, David Murray. On October 2, 1993, Murray told Dets. Brazil and Mahoney that he felt that Ellis wasn't responsible for killing of Brown/Kirk, but was "aware of it" or "a part of it." (R. 455). Murray told Det. Brazil that he "strongly [felt]...Sean was the person that pressed the operator for that boy to talk about this incident." (R.455). Murray added, "And I'll tell you this, the baby, later on that night, was asked 'Do you know what happened at your mommy's house?' and Sean's name came up." (R. 455). Although Murray opined that Ellis arrived at the scene after the shooting, grabbed his clothes, and fled after dialing 911 for the boy, according to Det. Mahoney's, "Both Muarry and the family didn't want to believe that Sean was in any way implicted in his cousins' murders, and the family was then focusing on the boyfriend of the girl (Celine). Murray stated however, that he believed that Sean knew much more than he had previously told the police or in fact, [Murray]" (455-456). Notably Ellis had told Murray that the girls had been murdered over a gold chain and about Kirk "keeping her mouth shut," about Det. Mulligan's murder (R. 456).

Furthermore, Ellis returned to the girls' apartment after it had been sealed off as a crime scene. Ellis's girlfriend, Letia Walker, admitted to police that hours after the murder, on the morning of September 30, 1993, she accompanied Ellis in a taxi to the crime scene, and she waited in the car while Ellis went into the apartment, returning with two firearms, one of which was marked "Boston Police (R.542-556)."[32] These firearms were subsequently stashed in Walker's apartment, then discarded in a field by Walker, Chilsholm, and Headen after Ellis's mother warned them that the police were "on to Patterson," telling Walker, "If you got anything in hour house

[32] Murray also confirmed that Ellis "definately went to the apartment and got a gun" after the murders (R. 456).

you'd better get it out." (R.542-556). That the very weapons that were used to kill a Boston Police detective were hidden inside the Kirk/Brown's aparment, not only inextricably interwined the two investigations, but it certainly put their lives in grave danger. Worth noting is that there were five indiduals who presumably knew the location of the guns used to kill Det. Mulligan at any given time; Kirk, Brown, Letia Walker, Kurt Headen, and Kevin Chisholm. Four of these five individuals were murdered prior to the time Patterson and Ellis were tried.[33] This evidence would have weighed heavily in favor of a third party culprit had Hood gone to trial, providing him with a viable defense.

When the apartment of Kirk and Brown was searched, police found Ellis's identification. Among his personal property, inside a drawer, were two .25 caliber bullets, which were the same caliber used to kill the girls (R.506).. Assuming they were not a "match" to those that killed Mulligan, it was nonetheless evidence Hood could have used at trial to argue Ellis had access to firearms and ammunition. Indeed, evidence showing an individual's access to firearms may be admissible to prove he had the means to commit the crime of which he is accused even without direct proof that the particular weapon was in fact used in the commission of the crime. *See* Commonwealth v. Toro, 395 Mass. 354, 356–357 (1985); Commonwealth v. Barbosa, 463 Mass. 116, 122 (2012).

Finally, after the girls were killed, when Ellis was interrogated on September 30, 1993 about their murder, he admitted to possessing the very chain that Hood purportedly shot Kirk over

[33] Headen was shot and killed on October 7, 1994 and Chisholm was shot and killed on July 26, 1994 (R. 507-515).

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(R. 9). This not only incupates Ellis, but also serves to refute the Commonwealth's theory regarding motive.

B. Terry Patterson

Terry Paterson was also a viable third-party culprit for several reasons other than the fact that Kirk was a witness to the Mulligan murder and that the evidence that could be used against him was stashed in her apartment. For example, on November 24, 1993, Ma Trez was interviewed again and made several statements that strongly suggested that Patterson may have either shot his mother and aunt, or was present in the doorway and instructed someone else to shoot them. These statements inculpating Patterson were as follows:

Ma Trez: "Mommy who shoot you....Terry."
Q.: "Who shot mommy?"
Ma Trez: "Terry."
Q.: "What did Terry do?"
Ma Trez: "Shoot my mommy." (@2:00)[34]

Ma Trez: "Terry in the door." (@6:10)

Q.: "Who else was there?"
Ma Trez: "Terry."
Q.: "What did Terry say?"
Ma Trez: "Shoot my mommy." (@13:20)

In addition to these aforementioned statements, information provided by police cadet Andrew Tabb also suggested Patterson was involved. In his report, Cadet Tabb confirmed that he spoke with two individuals who told him where Patterson had hid his Volkswagen Rabbit after Mulligan was killed. According to these individuals, Patterson's plan was to wait for the investigation to die down so he could use it to flee Massachusetts. They speculated that the Brown/Kirk murders were related to the Mulligan case and that "[Patterson] may have wanted the

[34] This video has been provided on a separate zip drive filed with the court with this Memorandum of Law.

gold chain in order to exchange it for money and flee the state." They also told Cadet Tabb that according to the Matthew Brothers, Patterson may not have shot Mulligan but might know of the location of his guns. Although initially Cadet Tabb believed Patterson's name was "Terry Hood," he clarified in the report that "Hood" was actually a nickname Patterson had. When shown an eight-picture photo array by another officer, Cadet Tabb said the person he previously believed to be "Terry Hood" was one of two individuals. One of the photos he selected was Patterson; the other was not Hood (R.14-15).

Finally, on September 29, 1993, Det. Brazil met with Murray who informed him that Ellis had told him personally that "Craig Patterson" killed Mulligan, and may have been involved in the murders of Kirk and Brown (R. 98). It was only later that police figured out that Craig Hood and Terry Patterson were two different individuals. Furthermore, Ellis's mother told Kurt Headen that she thought Patterson "killed the cop" and that he "has something to do with her neices getting killed."

C. Dana Jones

According to Kirk's close friend, Nikki Coleman, prior to her death, Kirk told her that her ex-boyfriend, Dana Jones was out of jail and said he was going to kill her because she got him locked up after he beat her up (R.359-360).Upon information and belief, there is nothing to support that this lead was ever followed up by any detective thus Dana Jones's whereabouts on the date of the murders remains unknown.

D. Other Potential Third-Party Culprits

Whoever had the motive and opportunity to kill Det. Mulligan also had the motive to kill Kirk. Because Det. Mulligan was involved in years of corruption, misconduct, and illegal activity, there were obviously many individuals he had a gripe with who may have wanted him dead. The

undisclosed hotline tips, Armstead information, and information provided in the Foley Report is also evidence of potential third-party culprits that had motive to kill Det. Mulligan, and Kirk because she was a witness to the same. Likewise, anyone who did not want to be tied to the weapons stashed in Kirk/Brown's apartment used to kill Det. Mulligan would have motive to enter the apartment in order to retrieve this extremely inculpatory evidence, killing the girls in the process.

VI. Even with evidence that the same firearm used to kill Kirk/Brown was used by Hood in another shooting, it is still not enough to render the new and undisclosed evidence inconsequential.

As is stated above, Hood is not required to prove his innocence but instead, that the new and undisclosed evidence would have played an important role in a jury's deliberations and conclusions. DiBenedetto, *supra* at 664. Nonetheless, even with the ballistics evidence, the case against Hood was still far from overwhelming.

Although the Commonwealth's ballistics' expert opined back in 1993, that the bullets from both the Kirk/Brown shooting and the McLaughlin shooting were a "match," much has changed in the science of ballistics evidence in the 29 years since this opinion was rendered. Indeed, no longer is it permissible for experts to testify about "matches," or opine that discharged bullets are so unique that it can be conclusively proven that two bullets were shot from the same firearm, particularly when that firearm is never recovered. As such, even assuming the Commonwealth's ballistics expert had the same opinion with the new technology, the evidence does not have nearly the same impact it would have back in 1993.

In Commonwealth v. Heaung, 458 Mass. 827 (2011), the SJC stated the following:

"A 2008 National Research Council (NRC) report, which contains one of the most comprehensive evaluations of the science underpinning the field of forensic ballistics, accepted as 'a minimal baseline standard [that] firearms-related toolmarks are not completely random and volatile; one can find similar marks on bullets and cartridge cases from the same gun.' Ballistic Imaging, supra

at 3. But the NRC report also recognized that there are two main problems with the present state of the art of firearms identification.

First, there is little scientific proof supporting the theory that each firearm imparts 'unique' individual characteristic toolmarks onto projectiles and cartridge cases. See id. at 3, 70-81. As the NRC report stated: 'the validity of the fundamental assumptions of uniqueness and reproducibility of firearms-related toolmarks [have] not yet been fully demonstrated' and a 'significant amount of research would be needed to scientifically determine the degree to which firearms-related toolmarks are unique or even to quantitatively characterize the probability of uniqueness.' Id. at 3. In essence, the NRC report concludes that the theory that each firearm has unique features that leave unique toolmarks on all spent projectiles and cartridge casings from that weapon finds support intuitively and anecdotally, but has yet to be proved scientifically. See id.

The second main problem with firearms identification is that the matching of individual characteristics, regardless of the technique used, is highly subjective. See id. at 53-67. The NRC report describes firearms identification as an 'inherently subjective' discipline where 'an examiner's assessment of the quality and quantity of resulting toolmarks and the decision of what does or does not constitute a match comes down to a subjective determination based on intuition and experience.' Id. at 55, 82. This finding is echoed in the AFTE Theory of Identification which notes that 'identification is subjective in nature, founded on scientific principles and based on the examiner's training and experience.' Theory of Identification I, supra at 86. The firearms examiner determines what areas on the projectiles or cartridge casings to compare, which toolmarks are meaningful, and how much similarity is sufficient to determine a match. The NRC report also concludes that there is little scientific data demonstrating the reliability of results. *See* Ballistic Imaging, *supra* at 54-67." Id. at 841-844. (footnotes omitted).

Even it was conclusively established that the same firearm was used in the McLaughlin shooting and in the shooting of Kirk/Brown, it would still not save the day for the Commonwealth. Here, the shootings occurred not within hours or even days, but instead were over three months apart.[35] Community guns, or guns that are shared or loaned amongst individuals in inner city communities or gang members, is a well-established phenomenon. It is entirely possible, and even likely, that the firearm used by Hood in the McLaughlin shooting was a community gun, a gun he discarded or gave to another individual thereafter. It would have been well known to Hood that retaining possession of a firearm that was tied to another shooting was not advisable. That community guns were prevalent back in the 1990s, just as they are today, is evidenced in this case

[35] McLaughlin was shot on June 15, 1993 and the girls were shot on September 29, 1993.

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by Kurt Headen's statement to Sgt. O'Leary, where he reported that one day, he was standing on the street with Patterson when they saw a suspicious group approach. Patterson, simply reached into some nearby bushes and was able to access a silver colored .25 caliber pistol; this firearm was obviously accessible to the community (R. 433).[36]

Conclusion

WHEREFORE the defendant respectfully requests that this Honorable Court allow his motion to vacate guilty plea and for new trial.

Respectfully submitted,
Craig Hood
By his attorneys,

Date: 10/11/22

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[36] Notably, that firearm was described as having a pearl-colored handle (R. 433). The same description was given by Hood during his confession about the gun he used (R.275). This was also the description of the .25 used to kill Det. Mulligan (R. 486)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Appeals Court No. 2025-P-0736

Commonwealth

v.

Craig Hood

RECORD APPENDIX
VOLUME 3 OF 4

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THE TRIAL COURT OF THE
COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. **Superior Court Dept.**
Docket Nos SUCR93-11566

Commonwealth	)
	)
v.	)
	)
Craig Hood	)
	)

DEFENDANT'S POST-EVIDENTIARY HEARING MEMORANDUM OF LAW[1]

The four-day evidentiary hearing held on Hood's motion to vacate guilty plea and for new trial solidified that justice was not done. A new trial must be awarded of based upon: 1) the violation of Hood's Fourth and Sixth Amendment rights to due process and be privy to all exculpatory evidence held by the prosecution; 2) ineffective assistance of counsel; 3) newly discovered evidence; 4) *Brady* violations; and 5) police misconduct by detectives intrinsically involved in Hood's case.[2]

Any one of these reasons standing alone would be enough to justify an order vacating Hood's guilty plea and awarding him a new trial, but considering them collectively, applying a confluence of factors analysis, and in light of the totality of the circumstances, there is no question

[1]Hood hereby refers to and incorporates by reference all of his prior filings (Motion for New Trial and Memorandum of Law, Supplemental Argument and Memorandum of Law, and Second Supplemental Memorandum of Law) by reference. This Post-Hearing Supplemental Memorandum of Law primarily addresses evidence heard by Judge Squires-Lee at the evidentiary hearing and how such evidence fits into Hood's argument as a whole. It aims to assist the fact finder in what has proven to be a complex case.

[2] The transcripts of the evidentiary hearing on the defendant's motion for new trial are in four volumes and shall be referred to as "(Tr.-Vol-Pg). Exhibits introduced at the evidentiary hearing shall be referred to as "(Ex.)." The record appendix filed with the defendant's motion for new trial and supplemental arguments will be referred to as "(R.)."

that Hood is entitled to vacate his guilty plea and must be awarded a new trial. *See* Commonwealth v. Brescia, 471 Mass. 381 (2015)(new trial granted where "the fairness of [defendant's] trial was hampered by an extraordinary confluence of factors"); Commonwealth v. Rosario, 477 Mass. 69 (2017)(irregularities in Defendant's interrogation leading to his confession combined with new fire science entitled him to a new trial); Lee v. United States, 137 S.Ct. 1958, 1968-1969 (2017)(court considered a confluence of factors in reversing the denial of Defendant's motion to vacate his guilty plea after his trial attorney gave him incorrect legal advice regarding immigration consequences).

Argument

I. The protective order issued by Judge Hamlin was unnecessary, far too restrictive, and deprived Hood of his constitutional right to due process and to be informed of all exculpatory evidence held by the prosecution.

"Due process requires that a plea of guilty be accepted only where, 'the contemporaneous record contains an affirmative showing that the defendant's plea was intelligently and voluntarily made.'" Commonwealth v. Furr, 454 Mass. 101, 106 (2009), *citing* Boykin v. Alabama, 395 U.S. 238 (1969), and Commonwealth v. Foster, 368 Mass. 100, 102 (1975). Most cases in which a defendant seeks to vacate a guilty plea allege a facial defect in the plea procedure itself. *See, e.g.,* Furr, *supra* at 107, 110. "However, a defendant's guilty plea also may be vacated as involuntary because of external circumstances or information that later comes to light." Commonwealth v. Scott, 467 Mass. 336, 345 (2014). *See also* Commonwealth v. Conaghan, 433 Mass. 105, 110 (2000) (new evidence raising question as to defendant's mental competence at time of guilty plea was relevant to voluntariness of plea). This instance presents a classic case of external extraordinary information that later came to light that proves that Hood's due process and Sixth Amendment rights were violated, and that his plea was not intelligently and voluntarily made.

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The evidence held by the Commonwealth in the Ellis/Patterson case was evidence that was material and exculpatory to Hood. Because Kirk was present in the Walgreens parking lot when Mulligan was shot, was with the two murder suspects when it happened, resided with one of them, and lived in the apartment where Mulligan's service pistol and the murder weapon were hidden, anything and everything in the Commonwealth's Ellis/Patterson files had potential exculpatory value to Hood because whoever killed Mulligan would have a very strong motive to kill Kirk.[3]

In 1993, Attorney Weymouth was a self-proclaimed "rookie as far as the murder panel was concerned," but even so he immediately saw this important connection (Tr.I-30).[4] Noting this vital correlation between all three homicides, Weymouth did precisely what would be expected of any ordinary fallible lawyer; he asked the Commonwealth to produce the entirety of its Ellis/Patterson discovery. The Commonwealth aggressively opposed Weymouth's repeated requests for this exculpatory and third-party culprit evidence.

The murder of Det. John Mulligan was the top news story in Boston at the time, causing a spotlight to be shone upon both the Boston Police Department and the Suffolk County District Attorney's Office.[5] The Suffolk County District Attorney's Office clearly prioritized the criminal

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[3] Evidence that Ellis was a potential third-party culprit was also consistent with what Hood told his trial attorney in confidence, i.e., that Ellis had asked him to confess to the crime Ellis and Patterson committed, and assured Hood that he could never be convicted of it because he didn't do it (Tr.I-52)

[4] Weymouth confirmed at the hearing, "[I]t just seemed too weird to be coincidental that Celine Kirk -- Celine Kirk was allegedly present at the Walgreens when Detective Mulligan was shot, and then some period of time later, not a very long period of time later, she ends up dead along with her cousin. It just seemed to me there had to be a connection, I thought there was a connection. I certainly wasn't the only one in the area that thought there was a connection, but that's what I thought." (Tr.IV-44).

[5] In Ellis, Attorney David Duncan testified that Ellis's case was "very important" and was a "highly publicized and intense case." (R.132).

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prosecution of Sean Ellis and Terry Patterson, and the constitutional rights of Craig Hood took a back seat. Inevitably, Weymouth found himself fighting for material exculpatory third-party evidence that normally would have been provided to him as a matter of course. This evidence was necessary not only to enable Weymouth to conduct an adequate investigation into potential third-party culprits, and to formulate a trial strategy, but also to facilitate his ability to provide sound legal advice to Hood about his decision to pled guilty to a double homicide.

Weymouth first requested the Ellis/Patterson discovery in a letter to ADA O'Brien dated January 7, 1994 (Ex.9). O'Brien did not honor his initial request but instead, on January 12, 1994, sent him 115 items of discovery she deemed "might have some application to the double homicide" (Tr.I-205). Weymouth made his second request for this discovery on April 28, 1994, when he filed a formal "Motion for Discovery" with the court (Ex.78,85). Unmoved by this filing, O'Brien did not provide Weymouth with the requested discovery, and the motion was not even acted on by the court until almost one year later, on March 7, 1995, when it was denied (Ex.78,85).

Weymouth's request was addressed a third time on December 7, 1994, when Weymouth and O'Brien appeared before the court on the Patterson/Ellis docket (Ex.29). There, Attorney Duncan represented that Weymouth was "agreeable to waiting until the jury goes out on [the Ellis] case before receiving that material" (Ex.29). This was not rebutted by Weymouth.

Weymouth made his fourth request for the discovery in his filing entitled, "Motion Concerning Discovery Compliance," and again a fifth time when he argued it orally at a hearing on March 6, 1995 (Ex.78,87). His requests were opposed by Ellis's attorney and, at this March 6, 1995 hearing, Judge Hamilton told Weymouth to wait until a verdict was returned in Ellis's second trial (Ex.78,87). O'Brien admits that at that juncture, she "definitely thought Mr. Weymouth should be getting that discovery," but nonetheless inexplicably asked the court to make the

production of this discovery conditional in that it be "for Mr. Weymouth's eyes only." (Tr.III-55). A sixth request was made by Weymouth at a March 30, 1995 hearing, where he was told by Judge Hamlin that she would give the (second) Ellis jury one more day to deliberate, and Weymouth agreed (Ex.47). That 'one day' came and went without the production of the discovery.

It was not until Weymouth's seventh request, at a hearing on April 20, 1995, that Judge Hamlin finally expressed some concern that Hood's rights were being infringed upon and ordered the immediate disclosure of the discovery to Weymouth (Ex.50). She did, however, condition the disclosure in a way that made it impossible for Weymouth to conduct any investigation into the information provided, to interview any witnesses, or to even discuss it with his own client (Ex.50). This protective order was entirely unnecessary, far too restrictive, and effectively deprived Hood of his constitutional right to be informed of all exculpatory evidence held by the prosecution.

Amidst Weymouth's repeated requests for the Ellis/Patterson discovery, what was transpiring behind the scenes was completely unorthodox. Weymouth unknowingly found himself not simply tussling with O'Brien to obtain material discovery, but also fighting ADA Broker - O'Brien's supervisor – and the two attorneys who represented Ellis. O'Brien candidly admits that she wanted to turn over all the discovery to Weymouth, and get the case moving, but Broker prevented her from doing it (Tr.III-34-35). It was Broker, lead counsel for the Ellis/Patterson prosecution, who was secretly micromanaging O'Brien and her prosecution of Hood.[6] Under the guise of protecting Ellis's right to a fair trial, Broker ordered O'Brien to invite Ellis's attorneys to multiple hearings so they could voice their objections to O'Brien's production of the

[6] Weymouth testified that, "[e]ven though [he has] learned after the fact that this case was not really being run by Leslie O'Brien, but Phyllis Broker, [he] had absolutely no contact with her." (Tr.IV-29).

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Commonwealth's own files (Tr.III-34-35). This was unprecedented for O'Brien, as she had never before invited an attorney who represented a defendant on a completely different case to attend a hearing for the sole purpose of opposing her production of discovery (Tr.III-34).

"A defendant has the right to gain access to relevant evidence that bears on the question of guilt or innocence or that will otherwise help his defense, and to use that evidence to confront witnesses through cross-examination." *See* Commonwealth v. Holiday, 450 Mass. 794, 802 (2008). *See also* Commonwealth v. Mitchell, 444 Mass. 786 (2005). It is constitutionally permissible to impose limits on pretrial discovery in criminal cases "to ensure the safety of witnesses so long as such limits do not deny the defendant his right to the effective assistance of counsel and a fair trial." Id. at 802-803. *See also* United States v. Randolph, 456 F.2d 132, 135-136 (3rd Cir. 1972). Before issuing a protective order, there must be "good cause shown" by the Commonwealth that there is a potential harm or injury to another. *See* Mass.R.Crim.P 14(a)(6). This protective order was not made to ensure the safety of witnesses yet it denied Hood the right to effective assistance of counsel, to a fair trial, and to make an informed intelligent decision about whether to plead guilty. *Contrast* Commonwealth v. Francis, 432 Mass. 353, 357-358 (2000)(in murder case involving rival gangs, judge properly found threat to safety of Commonwealth's witness inherent in situation). The Commonwealth did not make the necessary showing required for such an order, and Ellis's attorneys did not have standing to object to the production of third-party culprit evidence to Weymouth simply because it tended to incriminate their client.

O'Brien has confirmed that in her 15 years as a prosecutor, she had never personally encountered a protective order in any of her cases (Tr.III-14). In fact, she couldn't even speculate

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as to why one would be necessary other than to "possibl[y]" protect a witness (Tr.III-14).[7] Nonetheless, even though she personally questioned whether Ellis's attorneys had standing to object, she followed Broker's orders, inviting them to do so on multiple occasions (Tr.III-35; Ex.27,88). Ellis's attorneys eagerly appeared at several court hearings to oppose the release of evidence contained in the Commonwealth's files (Ex.29,47,50).[8] Broker, who was clearly only concerned about the murder of Mulligan, and what the press could or would report about it, overtly trampled upon Hood's constitutional rights by delaying the production of the discovery and by extending those invitations to Ellis's attorneys. Judge Hamlin abused her discretion by continuing to allow the Commonwealth to withhold the evidence, and by issuing an overly restrictive protective order once it was released. *Contrast* Holiday, *supra* (no abuse of discretion where judge issued a protective order restricting the defendants' access to identifying information contained in the statements of civilian witnesses because the Commonwealth feared that witnesses would be threated prior to trial, and the order did not prevent defendant's attorneys from discussing the information with their clients, or from reviewing witness statements with them). *See also* Commonwealth v. Neumyer, 432 Mass. 23 (2000)(rape victim's therapy notes required to be disclosed to Defendant despite a privilege; due process and the right to a fair trial were implicated

[7] O'Brien confirmed that the Ellis/Patterson cases were not gang cases (Tr.III-14). Broker testified in Ellis that it was her policy to turn "anything over for a lot of reasons," unless she thought "it would contain something that would cause a safety issue or something like that." (R.134). She clearly deviated from this policy when it came to Hood.

[8] Weymouth testified that he "was always pretty stunned that [he] had to deal with not just Attorney O'Brien and Attorney Broker, but Dave Duncan and Norman Zalkind, as well." (Tr.IV-108). It was evident to him that Ellis's attorneys "were driving the bus on this protective order" and that Broker and O'Brien "weren't just sort of sitting around…[t]hey were along for the ride, as well." (Tr.IV-108).

to such a degree that denying him from access to the underlying information could not comply with constitutional requirements).

The reason provided by the Commonwealth for its failure to produce the Ellis/Patterson discovery, and for the protective order that resulted, was wholly nonsensical. Any concern that information in the discovery could be leaked to the press could have been addressed by simply instructing Weymouth not to speak to them. This is, in fact, precisely what happened on April 20, 1995, when the discovery was ordered to be released and the protective order was put into effect. On that date, a 'gag order' was issued by Judge Hamlin that expressly prevented Weymouth from discussing the case with the press, making any alleged necessity for a protective order redundant and moot (Ex.50).[9]

There was no showing made in 1995, or at this recent evidentiary hearing, to support how Ellis would have suffered harm had the evidence been produced timely or without a protective order. Even if there was initially a reason why the discovery could not have been produced or shared with Hood when it was first requested, that reason became non-existent after January 4, 1995 when Ellis had his first public trial (Tr.III-57). That Broker, O'Brien, and Ellis's attorneys continued to oppose the disclosure of the discovery for 18 ½ months, all while Hood remained in custody, is ludicrous in light of the fact that by April 20, 1995, there had been three very highly publicized trials regarding Mulligan's murder (Tr.III-57).[10]

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[9] Judge Hamlin said, "[T]here's to be no discussion with the newspapers about any of the subject matter of the discovery. And I don't say that taking any position, Mr. Weymouth, that you did that before. I'm just making that a ruling so that it's- - you can, anyone, can say it to the press that the judge said we can't talk to you about it." (Tr.III-4-5; Ex.50).

[10] Ellis's first trial began on January 4, 1995 (Tr.III-57). His second trial began on March 21, 1995 and his third trial began on September 6, 1995 (Tr.III-57). Patterson's first trial began on January 26, 1995 and ended on February 1, 1995. *See* Criminal Docket of Commonwealth v. Patterson – Docket No. 9384CR11744.

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The impact of this frivolous and unconstitutional protective order cannot be overstated. It is undisputed that Hood was never privy to any of the discovery referenced on the first page of O'Brien's December 5, 1994 discovery letter,[11] to the 256 items referenced in her March 21, 1995 discovery letter,[12] and to an unknown amount of Ellis/Patterson discovery that was never turned over to Weymouth at all (Tr. IV-14-19; Ex.24,44). This evidence was not simply trivial collateral information. On the contrary, it was evidence that went to the very crux of the Ellis/Patterson prosecution. Weymouth was unable to have his investigator investigate well over 2,000 pages of third-party culprit evidence, unable to interview any witnesses about it, unable to discuss the relevance of it with Hood or its impact on his likelihood of success at trial, and unable to inquire of Hood about any additional information he may have had about it. Hood need not point to a specific item within that discovery that would have unilaterally changed his decision to plead guilty. The sheer volume of the evidence that Hood was oblivious to is enough alone to award him a new trial. This protective order effectively deprived Hood of the opportunity to consider ***all*** exculpatory evidence held by the Commonwealth and to explore ***all*** potential defenses available to him.[13]

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[11] The first page of O'Brien's December 5, 1995 letter references "approximately two thousand pages." It included "all police reports relating to the death of John Mulligan now on file, approximately 200 in number; all cadet reports re evidence searches; approximately 35 transcribed witness interviews; approximately 600 pages of grand jury testimony, 130 pages of police 'hotline' tips; all crime lab, fingerprint and ballistics reports, and; miscellaneous other documents." (Ex.24).

[12] O'Brien testified that the items listed in her March 21, 1995 letter were the same as to the items on page one of her December 5, 1994 letter (Tr.III-109-110). While it appears that many of the items referenced in O'Brien's December 5, 1994 letter were included in her March 21, 1995 letter, it is impossible to confirm whether they were identical because the items referenced on page one of her December 5, 1994 letter were not listed individually.

[13] Hood argues here that his Fourth and Sixth Amendment rights to due process and to be privy to all evidence held by the prosecution was violated by the court, rather than by the prosecutor via a *Brady* violation. As such, a showing under *Brady*, i.e., that the 2,000+ pages were material,

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In the event the Commonwealth argues that Hood somehow waived his right to be privy this discovery, because he agreed to tender a plea knowing there was a protective order in place, such an argument fails for several reasons. First, and most importantly, the restriction that the judge placed on the discovery eviscerated Hood's Sixth Amendment rights. This case stands in marked contrast to a situation where a defendant waives his right to review all evidence held by the Commonwealth, and opts instead to plead guilty at his arraignment. In that case, the evidence would be available to a defendant, but he simply chose not to look at it. Here, Judge Hamlin explicitly barred Hood from reviewing the evidence held by the Commonwealth. While the protective order may have been intended to be temporary, in truth, it extended far past the time in which Hood pled guilty.

Second, Hood was just 19 years old when he was arrested, he dropped out of high school in the 9th grade, had a documented history of mental illness, and at least two forensic psychologists had opined that he was a person who was gullible and easily manipulated (Tr.IV-117; Ex.3-4).[14] Hood, who had no legal training, would not have possessed the necessary faculties or the legal knowledge to understand what a protective order was, whether he had the right to object to it despite his attorney's failure to do so, and how to draft and file the legal pleadings necessary to have the judge reconsider it.

Weymouth confirms that he never discussed the possibility of a plea with any of Hood's family members; Hood was on his own (Tr.IV-116). Noting Hood's suggestibility and

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exculpatory, and that Hood was prejudiced because he was prohibited from reviewing them, is unnecessary. Hood's constitutional rights were violated by the mere fact that the court did not allow him the opportunity to review all evidence (material or not) held by the prosecution.

[14] Since Hood's plea, there has been significant developments in the science of the juvenile brain that support that the brain of a 19 year-old is not yet fully developed. *See* Miller v. Alabama, 567 U.S. 460 (2012).

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vulnerability, Weymouth testified that he "hope[s] [he] didn't manipulate him" into a plea because if he did, "that was an awful thing to do...[he] didn't mean to do that." (Tr.I-31;IV-118). Weymouth similarly noted Hood's cognitive limitations, testifying that even during the plea colloquy, after explaining the differences between a consecutive and a concurrent sentence, Hood was still confused about the same, making it necessary for the judge to clarify it for him again (Tr.IV-119).[15]

Third, Hood only appeared in court a handful of times thus likely had no conception about the contentious conflict that was occurring in his absence between the Commonwealth, Weymouth, and Ellis's attorneys. Notably, Hood was **not** present in court when the discovery agreement was initially entered into by Weymouth and read in open court, and was not present on at least three additional occasions when Weymouth was arguing about or addressing the production of the Ellis/Patterson discovery.[16]

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[15] Although the plea judge explained it for him, Weymouth remains uncertain about whether Hood ever understood it (Tr.IV-119).

[16]The Criminal Docket reflects only five court appearances by Hood. Hood was present on **November 19, 1993** for his arraignment, on **December 29, 1993** when Weymouth filed for funds and for BOP records, on **February 14, 1995** for a motion for funds and when O'Brien requested access to Hood's mental health records, on **April 20, 1995** when the court finally ordered the production of the Ellis discovery under a protective order, and on **June 19, 1995** when he pled guilty.

He was **NOT** present in court on **January 14, 1994** for the Pre-Trial Conference, on **February 25, 1994** when Weymouth filed of a motion to enlarge the time to file evidentiary motions, on **May 4, 1994** when the "discovery agreement [was] read into [the] record" after Weymouth's **April 28, 1994** filing of his "Motion for Discovery Provided in Commonwealth v. Sean Ellis and Tony [sic] Patterson," on **July 2, 1994** when Weymouth filed his "Memorandum in Support of Defendant's Motion to Compel Production of Discovery Material in the Matters of Commonwealth vs. Ellis and Commonwealth vs. Patterson," on **October 14, 1994** for a lobby conference, on **December 7, 1994** during a hearing on the Ellis/Patterson dockets attended by Ellis, Patterson, Broker, Zalkind, Attorney Hurley (who represented Patterson), O'Brien, and Weymouth, where an agreement was made for the Commonwealth to produce the Ellis/Patterson discovery to Weymouth after Broker's closing arguments in Ellis, on **March 30, 1995** when the court initially ordered the disclosure of the Ellis/Patterson discovery to Weymouth at the

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II. **Hood was deprived of effective assistance of counsel when Weymouth agreed to wait for the Ellis/Patterson discovery until Ellis was tried; failed to object to the protective order that was issued; failed to conduct a thorough review of all of the Ellis/Patterson discovery he was provided before advising Hood to plead guilty; and failed to ask the court to vacate the protective order prior to Hood's plea.**

On May 4, 1994, Weymouth first entered into a discovery agreement with the Commonwealth in Hood's absence (Ex.1A,1B).[17] Weymouth admitted that initially, he "thought [he] was dealt a bad hand" because Hood had already confessed his guilt to the police (Tr.IV-66-67). As time when on, however, and he started to learn little bits and pieces about what had happened, Weymouth came to believe that Hood's claim that Ellis had asked him to confess to the killings was possible (Tr.IV-66-67). While Weymouth was oblivious to the extent of the corruption of the Boston Police Department until after Judge Ball's decision in Ellis, he "was hearing all these things about what was going on" with the detective's involvement, and was trying to figure out what else was going to be turned over so he could use it in Hood's defense (Tr.IV-79). This supports that, as the case progressed to trial, Weymouth began to realize that a conviction was not inevitable, thus he was hardly desperate for a plea deal. Weymouth inexplicably requested the discovery on at least seven occasions only to fail to review it, discuss it with Hood, or conduct any investigation into it when he received it.

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conclusion of the Ellis trial subject to a protective order, and on **May 23, 1995** for Weymouth's second motion for BOP records. *See* Criminal Docket of Commonwealth v. Hood; Ex.1A,1B)

[17] It is unclear what the May 4, 1994 agreement concerning discovery was because the agreement is not reflected on the docket nor are transcripts of the hearing available. Hood's docket only reads, "discovery agreement read into record." (Ex.1A,1B). While there was obviously some agreement with Weymouth about this discovery, had it been an agreement to wait for the Ellis/Patterson discovery until after Ellis was tried, Weymouth would not have filed his motion to compel the Ellis/Patterson discovery two months later on July 2, 1994.

Hood was being prosecuted for not just one, but for two charges of first degree murder. The stakes could not have been no higher, as a conviction for the same would land Hood in state prison for the remainder of his natural life. As a result, Weymouth had an enormous obligation to ensure that Hood was privy to all of the evidence against him, including not only evidence that supported a third-party culprit defense, but evidence that supported every possible defense. Weymouth's actions demonstrate a "serious incompetency, inefficiency, or inattention of counsel behavior falling measurably below that which might be expected from an ordinary fallible lawyer...which has likely deprived the defendant of an otherwise available, substantial ground of defence." Commonwealth v. Saferian, 366 Mass. 89, 96 (1974).

"It is beyond dispute that a defendant's decision whether to plead guilty or proceed to a trial is a critical stage in a criminal proceeding for which he is constitutionally entitled to the effective assistance of counsel." Commonwealth v. Mahar, 442 Mass. 11, 14 (2004), and cases cited. Where a claim of ineffective assistance is directed to counsel's representation incident to a guilty plea, the second prong of Saferian -- the prejudice test -- requires a defendant to show (1) a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial, and (2) that a decision to reject the plea bargain would have been rational under the circumstances. Commonwealth v. Sylvain, 466 Mass. 422, 438 (2013). Hood easily meets both prongs.

Weymouth sought the Ellis/Patterson discovery because he hoped to obtain "some information that would tell [him] that [he] was right, tell [him] that [his] gut was right, that there was some connection" between Mulligan's murder and the murders of Kirk/Brown (Tr.I-41). Although Weymouth appropriately pressed for the Ellis/Patterson discovery, ultimately, he agreed to receive it under the terms mandated by the Commonwealth and Ellis's attorney to his own

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client's detriment. The 18½ month delay hindered Hood's defense, as Hood waited in jail without crucial evidence about the very same third-party culprit that he had told Weymouth about in confidence. The more time that passed without the opportunity to review this evidence and investigate leads that could have supported a viable defense, the greater the disadvantage to Hood. Even O'Brien concedes that time is of the essence when it comes to investigating a murder case, as memories fade and cases go cold (Tr.III-20).[18]

Weymouth was also ineffective by failing to object to the protective order issued when the discovery was finally produced. His failure to object eventually led to a plea made by Hood that was not knowing or intelligently made. It was Hood's, not Weymouth's, constitutional right to be informed of all evidence held by the Commonwealth. Providing Weymouth with the Ellis/Patterson discovery at the eleventh hour did not absolve the Commonwealth, or the court, from its obligations under the Constitution.

Perhaps the biggest error made by Weymouth was his failure to ask the court to revisit the protective order prior to Hood's plea.[19] It is indeed curious that the Commonwealth presented Weymouth with a plea deal in close temporal proximity to Judge Hamlin's impending release of the Ellis/Patterson discovery (Tr.IV-29-31).[20] This plea deal had the desired effect upon

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[18] Two very important witnesses in the Mulligan case, Kevin Chisholm and Kurt Headon, were murdered on July 27, 1994 and October 7, 1994 respectively, while Hood was still waiting for the Ellis/Patterson discovery (R.507-515).

[19] Weymouth conceded that he "probably…made a mistake" in not revisiting the protective order prior to Hood's plea to enable him to review the third party culprit evidence with Hood, and that he "should have waited" before advising Hood to plea (Tr.IV-134-137). *See* Mass.R.Crim.P 14(a)(7)(provides for the modification of an existing discovery protective order).

[20] O'Brien believes that Weymouth approached her for a plea deal but admits that she didn't "have a clear enough memory of conversations that [she] can say that for sure." (Tr.II-56). Weymouth testified that it was O'Brien who presented him with a plea deal, as he remembered being "a little surprised" by it (Tr.IV-30).

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Weymouth, as he admittedly "stopped paying attention" to any issues regarding Mulligan's alleged misconduct after it was presented to him (Tr.IV-47).[21] He also admitted that he "probably did not continue [his] review of the discovery that [he] had been given prior to Hood's plea." (Tr.IV-138).

Nothing prevented Weymouth from informing the court that the parties were in plea discussions and, as a result, the protective order needed to be vacated so he could appropriately discuss all of the Ellis/Patterson discovery with Hood before Hood made the most important decision of his life. He also could have told O'Brien that he had not yet completed his review of the Ellis/Patterson discovery, and wanted additional time to do the same before advising Hood. Weymouth did neither. He was in no position to advise Hood about the possibility of a plea, or to discuss the strengths and weakness of his case because, having failed to review all the discovery eventually received, Weymouth was completely uninformed during those discussions. This a textbook example of ineffective assistance of counsel. *See* Commonwealth v. Cepulonis, 9 Mass. App. Ct. 302 (1980)(a failure to investigate and pursue a plausible alibi defense known to, or with normal diligence accessible to, counsel would fall beneath the level of competency expected of effective assistance of counsel).

When asked if there was anything in the Ellis/Patterson materials that he should have shared with Hood, Weymouth conceded that he "might have made a mistake. [He] might have –

[21] Weymouth was admittedly "naive," as he "really didn't know very much about Mulligan at the time." (Tr.I-42). In Ellis, Attorney Duncan testified "that while he knew investigators involved in the homicide investigation were corrupt, all he had to support that assertion before Ellis's trial and at the time of Elli's first motion for new trial were newspaper articles." (R.132). Attorney Zalkind testified similarly, "that he knew Detectives Acerra, Robinson, and Mulligan were 'bad cops,' but they did not have anything they could present as evidence aside from newspaper articles." (R.132-133). Ball noted in Ellis that Broker had a "lack of concern for the rumors surrounding the corrupt detectives because they did not "affect her," and that this lack of concern did not comport with Mass.R.Crim.P. 14(a)(3)(R.156). Broker's lack of concern had the same impact in Hood's case.

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might have been materials that [he] should have shared with him that [he] probably did not." (Tr.IV-113). When asked the reason why he didn't share those materials with Hood, he candidly admitted, "I don't have one." (Tr.IV-113). When questioned about his advice to Hood about taking the plea deal, Weymouth admitted that it was "probably a mistake" that he advised Hood to take the plea deal because he "thought there were more materials out there that [he] just didn't get a chance to look at before that." (Tr.IV-115-116).

"To show prejudice when seeking to withdraw a guilty plea on the ground of ineffective assistance, a defendant must provide sufficient 'credible facts' to demonstrate a reasonable probability that a reasonable person in the defendant's circumstances would have gone to trial if given constitutionally effective advice." Commonwealth v. Lys, 481 Mass. 1, 7 (2018) *quoting* Commonwealth v. Lavrinenko, 473 Mass. 42, 55 (2015). But for counsel's errors, Hood would not have pled guilty and would have insisted on going to trial (R.539-541). Although Hood avoided a sentence of life without parole, the punishment he did receive, two consecutive life sentences, was hardly lenient.[22] Considering what was at risk, and the plethora of strong third-party culprit evidence that Hood never laid eyes on or discussed with his attorney, had Hood rejected O'Brien's plea bargain, and opted to go to trial, it would have been reasonable under the circumstances.[23]

III. The Commonwealth's violation of *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

[22] Weymouth tried to get Hood concurrent sentences but O'Brien would not agree to it (Tr.IV-115).

[23] Weymouth contended that had Hood opted to go to trial, he would not have been willing to testify (Tr.IV-78). Although Weymouth "hadn't thought it all the way through," he opined Hood's testimony may have been necessary for him to argue a third-party culprit defense (Tr.IV-78). Notably Hood had made this decision without the benefit of a voluminous amount of discovery thus the Commonwealth cannot claim he is bound by it. Hood has now proven there was overwhelming evidence in support of a third party culprit even without his testimony.

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A. **The prosecutor's files in Hood, Ellis, and Patterson were completely unorganized, as was the manner in which discovery was produced to Hood's attorney, which undermines the Commonwealth's claims that all *Brady* material was produced.**

There is no question that the homicides of Mulligan, Kirk, and Brown were inextricably intertwined in time, witnesses,[24] evidence, investigators, and motive. Because the investigation into all three homicides occurred simultaneously by the same Boston Police task force, it was important that information and evidence from each case be provided to the appropriate assistant district attorney and to the right defense attorney. The manner in which the Suffolk County District Attorney's Office obtained reports and evidence from the Boston Police Department, and the measures in place to ensure they were then provided to the correct defense attorney, were utterly flawed.

According to O'Brien, evidence about all three homicides continued to be collected by the District Attorney's Office well after Hood was arrested (Tr.III-32). When police filed reports with the DA's office, at times a detective would sit down with O'Brien and/or Broker, while other times he would not (Tr.III-17). If the police had a report that included evidence about all three homicides, it would likely be the detective who would decide whether to provide it to O'Brien or Broker (Tr. III–II8). While O'Brien would hope that reports that were related to all three homicides would be given to both her and Broker, O'Brien could not be 100% certain it occurred (Tr.II-119). Unless a police report was handed directly to O'Brien, she had to rely on Broker to give it to her (Tr.II-188). She would not sporadically go into Broker's office and look through her file to see if any

[24] O'Brien concedes that her witness list in Hood included many of the same civilian and law enforcement witnesses as the Ellis case (Tr.II-72-73). It even included Sean Ellis, Mary Ellis (Sean Ellis's mother), and Ellis's attorney, Norman Zalkind (Tr.II-72-73; Ex.46).

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additional information relevant to Hood's case had been provided by police (Tr.II-120).[25] O'Brien relied on Broker's good record keeping and file organization to enable her to pull out all relevant documents and provide them to Weymouth when Broker granted her access (Tr.II-121).[26]

The police reports were labeled by case name and case number (Ex.14,19,67,72). Some of the labels referenced "John Mulligan," "John J. Mulligan," or "Mulligan, John," while others referenced "Celine Kirk and Tracy Brown," or "Craig Hood" (Ex.14,19,37,67,72). Other reports were labeled using the names of all three homicide victims (Ex.15). There were police reports mislabeled, "John Mulligan," which contained information only about the Kirk/Brown case, and not every police report labeled "John Mulligan" contained information only about the Mulligan murder – some contained information about all three homicides (Tr.II-126, 129-130; Ex.19,67).[27]

O'Brien admits that she did not read the body of each police report, and she acknowledges that she was not reviewing the Mulligan materials as they were coming in (Tr.I-205; II-118). The case numbers assigned by the Boston Police to each police report did nothing to clarify to which

[25] O'Brien testified that she and Broker had separate offices and that she would never go into Broker's office to look through Broker's files without her knowledge or permission (Tr.II-117).

[26] Notably, in Ellis, Judge Ball found Broker's record keeping and discovery production process to be problematic (R.138-139).

[27] For example, a police report regarding the search of Hood's apartment for evidence of Kirk/Brown's murder was mislabeled, "John Mulligan" (Tr.II-130; Ex.72).). A report from Dets. Mahoney and Brazil dated October 1, 1993 entitled, "Re: Information from David Murray which led to the arrest of Craig Hood" was mislabeled "Mulligan, John." (Ex.68). There were several reports that contained information about all three homicides mislabeled "John J. Mulligan" or "John Mulligan" including an interview of Prentiss Douglas on October 15, 1993 (Ex.14), an interview of Joseph Matthews (Ex.19), an interview of Sean Ellis (Ex.67), and an interview of Cadet Andrew Tabb (Ex.13).

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case it belonged, as there were reports from all three homicides with the same case number (Tr.II-126; Ex.15).[28]

Recognizing that there was a problem with the discovery, Weymouth argued at a hearing on March 6, 1995 that because he was getting Hood's discovery in piecemeal, he was concerned that he was not being provided everything there was to be had in the case (Tr.II-44; Ex.78). After a letter written by Hood that was intercepted by the jail was not produced to him until 11 months later, he informed the court that it was not the only item that had been late in forthcoming (Ex.78). Weymouth argued that detectives involved in the investigation were not providing discovery to O'Brien in a timely manner, which had placed Hood at a serious disadvantage (Ex.78). The subpar production of this evidence was so egregious that Weymouth requested that the court order O'Brien to state who has and who will be providing discovery to her, and what steps the Commonwealth has made, if any, to assure that all discovery has been turned over by the police to O'Brien (Ex.78). O'Brien objected, and the judge denied Weymouth's request (Ex.78). This ruling left Weymouth and Hood at the whim of the prosecution team to determine what was relevant enough to be disclosed at any given time, with no way to confirm that the police had provided all discovery to O'Brien, and that O'Brien had provided everything she was given. The production of the evidence in Hood's case had problems similar to those found by Judge Ball in Ellis in that there were "ambiguities in the evidence with regard to a discovery production process which seems haphazard." (R.139).[29]

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[28] While the two investigations were assigned different case numbers, O'Brien admitted that she "[couldn't] say there was no overlap, especially at the beginning." (Tr.III-117).

[29] Judge Ball found "that discovery was turned over to Ellis piecemeal, and in an order that does not correspond to the chronology of the Police Report Index." (R138). The discovery in Hood was also produced in piecemeal, and not properly indexed according to which homicide it referenced.

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The letter intercepted by the jail given to O'Brien by Brazil was not the only item of significance in Hood's case that was produced late. On May 12, 1995, 19 months after Hood's October 3, 1995 confession, Keeler and/or Mahoney gave O'Brien "additional details of the defendant's statements" about what Hood had allegedly told them either before the recorded interrogation or thereafter, which O'Brien reduced it to writing (Tr.III-49; Ex.55). While most of the information in O'Brien's letter had previously been disclosed to Weymouth, there were several details that were never divulged. These included that Hood told the police that the name of the voice he allegedly heard at the time of the shooting was named, "Peter," and that he had been hearing this voice since suffering from a head injury (Ex.55). He also told police that he had claimed that he heard this voice again after he was interrogated by police (Ex.55). He initially expressed skepticism about the reason for his arrest and objected to being arrested in front of his son (Ex.55). When asked if he had been at 4 Oakcrest Street, he initially denied it, but then admitted he was there on September 29th, but said that he did not kill the girls (Ex.55). After his confession, he allegedly told detectives that he had thrown two cartridge casings away, even describing the bridge where they were thrown, telling them, "But you already know that, right? You have them." (Ex.55).[30]

Finally, O'Brien's January 24, 1995 letter to Weymouth concedes the fact that the Boston Police had lost or misplaced a Form 26 (Tr.II-131; Ex.33). This report concerned additional statements allegedly made by Hood some three months earlier while police were transporting him to booking (Tr.II-131; Ex.33).

[30] As was the case with the murder weapon, no cartridge casings were ever found, despite that the Hood told police exactly where to find them (Ex.55). This supports Hood's claim that the facts contained in his confession were inconsistent with the evidence obtained from the investigation.

Both O'Brien and Weymouth confirmed that Weymouth never went to O'Brien's office and personally looked through the Ellis/Patterson files (Tr.II-271; IV-22). Because there was no formal filing of a Notice of Discovery by the Commonwealth, and O'Brien never asked Weymouth to acknowledge in writing what he received, there is nothing to prove whether everything in the Ellis/Patterson file was ever provided to Weymouth (Tr.I-208; III-127). The Commonwealth and O'Brien rely on O'Brien's discovery letters to Weymouth to support that the entire Ellis/Patterson discovery was ultimately turned over to him (Tr.III-68). These letters prove the opposite.

O'Brien claims that when she provided discovery to Weymouth, she would draft a letter to him referencing exactly what she was providing to him, would proof read it to make sure the package contained what the letter referenced, and then either mail it or hand deliver it to him in court (Tr.I-207-208). The very letters that O'Brien relies on to prove that Weymouth was given all of the discovery support that on at least two occasions, she drafted a letter referencing discovery that she had allegedly produced, or would be producing at a time certain, only to then withhold that discovery. When the Ellis/Patterson discovery was finally produced on or after April 20, 1995, O'Brien never revised her previous correspondence, nor did she draft a new one to reflect the correct date that the discovery was being produced and what was actually contained therein.

Specifically, on December 5, 1994, O'Brien authored a letter referencing approximately 2,000 pages of discovery concerning the Mulligan murder that she selected to produce (Ex.24).[31] Notably, O'Brien was once again, not simply producing the entire contents of the Ellis/Patterson file as requested by Weymouth, but instead acting as gatekeeper determining what would be

[31] At the evidentiary hearing, O'Brien testified that she turned over the documents referenced on page two of her December 5, 1994 letter but not the items referenced on the first page (Tr.III-107,127).

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provided and what would not (Ex.24).[32] *See* Brady v. Maryland, *supra* at 87-88 ("A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant, casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice…").

O'Brien expressly stated in her December 5, 1994 letter that she intended to produce the discovery "when Phyllis Broker [made] her first opening in [the Ellis or Patterson] cases." (Ex.24). Then, two days later at a hearing on December 7, 1994, her position changed, and she agreed to produce the discovery after the first jury in Ellis went out to deliberate (Ex.29). Ultimately, O'Brien failed to keep either promise, as multiple Ellis and Patterson trials came and went yet no discovery was produced.

O'Brien also acknowledges authoring another discovery letter dated March 21, 1995 that indicated that she was providing 256 Items to Weymouth forthwith (Tr.III-38). These items were also not, in fact, provided to Weymouth on March 21, 1995 but instead, were held by O'Brien until April 20, 1995 (Tr.I-275, II-120; III-38). The letter never stated that the discovery would be produced at a future date, nor was it ever re-dated to coincide with when the evidence was actually produced. This significantly undermines the Commonwealth's claim that O'Brien's discovery letters can be relied upon to support that certain discovery was provided on a particular date. Just

[32] O'Brien's letter stated that she had intended on duplicating all the materials he requested but, "the project turned out to be more difficult and time consuming than either of us could possibly have anticipated" (Ex.24). She then told Weymouth that if he is "dissatisfied with the materials [she has] assembled," she "will be asking the court to require a showing of need for additional discovery." (Ex.24).

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as Judge Ball found in Ellis, this discovery production process "casts substantial doubt as to whether [all discovery was] actually produced." (R.139).

B. The Commonwealth's failure to provide the entirety of the Ellis/Patterson file to Hood constituted a *Brady* violation because the evidence was material, exculpatory, and in the possession of the Commonwealth; the failure to produce it prejudiced Hood.

To obtain a new trial on the grounds that the Commonwealth failed to disclose certain exculpatory evidence, "a defendant must establish (1) that the evidence [at the time of trial] 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" (quotations and alterations omitted). Id., *quoting* Commonwealth v. Sullivan, 478 Mass. 369, 380 (2017). Notwithstanding the evidence (both newly discovered and *Brady* material) referenced by Judge Ball in the Ellis case, there was other discovery that Judge Hamlin ordered to be produced to Weymouth, which was not produced in violation of *Brady*. *See* Commonwealth v. Caillot, 454 Mass. 245, 261-262 (2009), cert. denied, 559 U.S. 948 (2010) ("To establish a Brady violation, a defendant must show that . . . the prosecutor failed to disclose the evidence").

O'Brien first testified that she started pulling out things from Broker's Ellis file that "might be helpful" to Weymouth or "what might be considered exculpatory" (Tr.I-273). She subsequently testified that it was a "huge undertaking, and [she] ended up just copying everything [she] could get [her] hands on and turning it over." (Tr.I-273). Her testimony was conflicting because she testified both that she "ended up just copying everything [she] could ***get [her] hands on*** and turning it over," and that she "ended up copying - - or having the file copied" (Tr.I-273, II-125). Obviously, there is a big difference between her copying the file in its entirety and just copying everything she "could get [her] hands on." When asked directly on cross-examination, whether she produced certain items from the Ellis/Patterson file, like detectives' notes and crime scene videos, O'Brien

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admitted that the Mulligan crime scene videos were "probably...not" provided to Weymouth (Tr.III-68). This confirms that the entire file was ***not*** produced for Weymouth and completely undercuts her repeated claims to the contrary. *See* Commonwealth v. Zekirias, 443 Mass. 27, 34 (2004)("A good faith assumption that discovery had been timely provided falls far short of fulfilling [the Commonwealth's duty] and cannot be condoned.).

Even more problematic for the Commonwealth is that O'Brien testified that the discovery referred to in her March 21, 1995 letter was identical to that referenced in her December 5, 1994 letter (Tr.III-109-110).[33] By O'Brien's own admissions in her December 5, 1994 letter, i.e., that she failed to copy the entire file because it proved to be too time consuming (Tr.III-30; Ex.24), the December 5, 1994 letter, and therefore by default the March 21, 1995 letter, did not constitute the entire Ellis/Patterson file. Worse yet for the Commonwealth is O'Brien's concession that the Boston Police continued to investigate Mulligan's death well after arrests were made (Tr.III-31). Since the Ellis/Patterson discovery was copied back on December 5, 1994, O'Brien's discovery package would not have included any discovery that resulted from that continuing investigation after that date.[34] Even if O'Brien had copied additional discovery after December 5, 1994 and before her March 21, 1995 letter, the discovery provided to Weymouth on April 20, 1995 would not have included anything produced by the Boston Police Department after March 21, 1995.

While it is difficult to know exactly what was not disclosed with the passage of time, there are several documents now confirmed to have never been produced to Weymouth in violation of

[33] O'Brien testified that her December 5, 1994 letter was "kind of a summary" of the Ellis/Patterson discovery she produced on April 20, 1995 but that the March 21, 1995 letter just described it in much more detail (Tr.III-109-110).

[34] O'Brien's December 5, 1994 discovery letter states that she was including "all police reports relating to the death of John Mulligan ***now*** on file..." (Ex.24).

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both Brady v Maryland and the court order to produce the entirety of the Ellis/Patterson file. This evidence was material, exculpatory, in the Commonwealth's possession, and the failure to produce it significantly prejudiced Hood.

For instance, nowhere in any of O'Brien's discovery letters does she list FBI reports dated February 7, 1994 and February 9, 1994 regarding information provided by a cooperating witness (hereafter "CW").[35] According to this report, the CW stated that while in the apartment of Ellis's sister, Ellis called from jail and the witness had a conversation with Ellis about the possibility of providing Ellis bail money in exchange for cocaine (R.557-563). During this conversation, Ellis told the CW that he was in jail for killing Mulligan and that on the night of the murder, he was with the individual who shot Mulligan, and that he had provided him with the gun (R.557-563). Ellis also stated that Mulligan had been receiving money from Ellis's cocaine distribution operation, and there had been a disagreement with Mulligan about Mulligan's cut (R.557-563). As a result, Ellis and this other person plotted to kill Mulligan, executed the plot, and then attempted to make it look like a street robbery (R.557-563). Broker, was well aware of this information, as these same records confirm that she had personally spoken on the phone with the CW (R.557-563).[36]

Another example are two police reports confirming interviews of Raven James. On October 18, 1993, James told police that he was in the presence of Ellis and Patterson at Robert Matthew's

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[35] The only reference to an FBI report by O'Brien is contained in O'Brien's March 21, 1995 letter, where she references a two-page FBI report dated October 20, 1994 (Ex.44).

[36] While the words, "Given to counsel 11/15/94" is written on one page of this seven-page document, it was likely written by Broker confirming that she provided the information to Ellis's attorneys. This is true because there is no discovery letter written by O'Brien to Weymouth with the same date, and the wording/handwriting is strikingly similar to the handwritten note on the Mulligan hotline tips discussed at sidebar at this hearing, which the Commonwealth represented was written by Broker (Tr.III-69-77).

house on September 27, 1993 (R.566). When James asked Ellis who killed the cop, Ellis looked at him and smiled, then looked at Patterson, and then they both looked at James but neither one responded (R.566). He also recalled that on September 24 1993, after Ellis and James were chased by a group of youths with a gun from another neighborhood, Ellis went to Floyd Street and armed himself with a .25 caliber chrome automatic gun with black grips (R.566).

James gave a second statement on December 21, 1994, and told police that weeks prior to Mulligan's murder, he was present with Patterson and others when a .25 chrome-plated handgun was passed around (r.567-568) James "reported that this weapon was one of several weapons that circulated through the gang that hung around on Hansborough Street." (R.567-568). Nowhere in O'Brien's discovery letters does it indicate that either of James's statements were ever provided to Weymouth. This evidence was vital to Hood. Ellis and Patterson's failure to respond to James's inquiry about which one of them killed the cop constituted an admission by silence. James's statement also proved that Ellis and Patterson had access to the same caliber firearm that killed the girls. It also confirmed the existence of 'community guns,' which could have been argued by Weymouth to explain why it was entirely plausible that the .25 caliber firearm Hood used to shoot McLaughlin in the leg months prior to Kirk's death could easily have been accessed by another individual; a third-party culprit.

Finally, nowhere in O'Brien's discovery letters does she reference the witness interview or recorded statement of Evoney Chung, or Hood's hotline tips (R.567-591).[37] Each of the

[37] At Hood's evidentiary hearing, when O'Brien was questioned about the production of the Mulligan hotline tips, the Commonwealth objected, and a discussion occurred at sidebar regarding the same (Tr.III-70-77). Ultimately, the individual tips were not shown to O'Brien but Weymouth subsequently confirmed that he did receive the Mulligan hotline tips (Tr.III-70-77; IV-18). With respect to the Mulligan hotline tips, Hood's 4th and 6th Amendment rights were violated because they were still not shown to, or discussed with Hood, nor were they investigated, because of the protective order. With respect to the Kirk/Brown hotline tips, a Brady violation occurred because

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aforementioned documents were material, exculpatory, and in the Commonwealth's possession. The failure by the Commonwealth to produce them prejudiced Hood.

IV. For all the same reasons Ellis was granted a new trial, Hood is entitled to a new trial.

In addition to all of the other reasons referenced herein why a new trial is warranted, Hood is entitled to a new trial for each and every reason Ellis was granted a new trial. The evidentiary hearing has demonstrated just how intricately interwoven the two cases were and are. The issues raised in Ellis, which both Judge Ball and the SJC found necessitated a new trial, apply squarely to Hood's case.

The corruption of the Boston Police Department was a primary reason that Judge Ball ruled in favor of Ellis. Judge Ball found, and the SJC affirmed, that there was a long history of corruption and misconduct by the victim of the homicide and by the detectives who investigated his death. This would have made a difference in the outcome of Ellis's trial. It also would have made a difference to Hood because each one of those detectives also played a part in his case.[38] Had Hood known about this corruption and misconduct, he would never have pled guilty.

The statements made by former Suffolk County District Attorney Rachel Rollins about the egregious misconduct of these detectives during this time period constitutes an admissions of a party opponent (R.193-196). Former DA Rollins's accusations went to the very heart and core of each of those detectives both personally and professionally (R.193-196). Her allegations concerned their integrity, honesty, and credibility; some of those detectives are now convicted felons (R.193-

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they were never produced, as nowhere in O'Brien's discovery letters does she refer to a second set of Hotline Tips despite that they existed (R.586-591).

[38] While all were involved in Hood's case, Mulligan, Keeler, and Brazil played the most integral parts. Indeed, Keeler and Brazil were responsible for the most damning evidence against Hood – his confession.

196). Commonwealth v. Redding, 382 Mass. 154, 157 (1980) *quoting* Commonwealth v. St. Germain, 381 Mass. 256,261 n.8 (1980)(holding "the taint on the trial is no less" where police "rather than the State's Attorney" engaged in misconduct).

Hood was involuntarily induced by government misconduct that since has been discovered. It makes no difference that Hood pled guilty and did not take his case to trial. The egregious misconduct by Mulligan (the victim in Hood's third-party culprit defense), and by the very detectives who investigated Hood's case procuring the most crucial evidence against him, entitles him to a new trial. *See* Commonwealth v. Scott, 467 Mass. 336, 344-358 (2014)(in the exceptional circumstances of insidious misconduct of systemic magnitude by a chemist at a State drug laboratory, a defendant seeking to withdraw his guilty plea on the ground that government misconduct rendered the plea involuntary, "was entitled to a conclusive presumption that egregious misconduct attributable to the government occurred in the defendant's case"). There is no question that the conduct by the government here was abhorrent and that there is a reasonable probability that had Hood known about it, he would have insisted on taking his chances at trial. As Judge Ball noted in Ellis, this evidence would have also provided a strong Bowden defense (R.143).

Prosecutors had a similar duty to disclose the same evidence that Judge Ball found in Ellis was not disclosed because not only were the cases so closely intertwined as to warrant it, but also because Weymouth directly requested all of it, which gave Hood the same standing as Ellis. Undoubtedly, the misconduct and private interests of the detectives who investigated all three homicides simultaneously compromised the impartiality of all three prosecutions and completely tainted Hood's case. Likewise, the Commonwealth's failure to produce both the newly discovered and Brady evidence to Hood and his attorney violated Hood's constitutional rights. For all the reasons that Ellis was awarded a new trial, so should Hood receive a new trial. *See also* Chris

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Graham & Others v. District Attorney for the Hampden District, 493 Mass. 348 (2024)(SJC held that the practice of the District Attorney's office of withholding instances of officer misconduct from disclosure where a particular bad act could not be attributed to a particular officer violated its duty to investigate or inquire about such evidence).

IV. Other Issues Raised at the Hearing that Support Hood's Motion for a New Trial.

A. There is overwhelming admissible evidence that Kirk was in the car, that she feared for her life before she was shot, that Ellis and Patterson were viable third-party culprits, and that whoever killed Mulligan had a motive to kill Kirk/Brown to avoid prosecution.

At the evidentiary hearing, O'Brien stood steadfast in her position that that there was no evidence that Ellis or Patterson could have killed the girls despite the overwhelming evidence that directly inculpated them which was presented at this hearing, and argued in Hood's second supplemental memorandum of law (Tr.II-95).[39] She also clarified that Patterson's car had been parked in the woods, and not in the Walgreens parking lot, implying that as such, Kirk was not a witness to Mulligan's death (Tr.II-53). There was significant evidence that Kirk was present in the car when Mulligan was shot, that she drove from the scene with the individuals who shot him, and that her knowledge of who killed Mulligan made her a target (Tr.II-53).[40]

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[39] O'Brien claimed that the statements made by the only eyewitness to the shooting pointing to Ellis and Patterson was "at best, very low value," yet she admitted that whether Ellis was at the scene and had dialed 911 for Ma Trez "was something [she] always wondered about" (TII-97,99).

[40] Patterson himself told police that Kirk was in the car with them. (Ex.82). Ellis told Murray that when he returned to the car, and in the presence of Kirk, Patterson told him "I shot someone. I shot someone." (Ex.89). He then passed two guns to Ellis inside the car (Ex.89). Kirk was completely "hysterical" in the car after Mulligan was shot, and they were trying to calm her down (Ex.9). Kirk herself told Coleman, "I was there when the cop was shot." (R.376-377). Finally, Kirk told Douglas two days before her death, while pointing out an article in the newspaper about it, "I know who did this, I was there." (Ex.14).

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Kirk was frightened to go home because of this knowledge and her apprehension was warranted. At least one other witness reported being threatened with death or physical injury multiple times by Patterson and his associates, who warned her to keep quiet (Ex.25).[41] Ellis himself told his Uncle Murray that one of the reasons that Kirk was killed was over "keeping her mouth shut about the cop's murder" (Ex.456). Kirk did not, in fact, "keep her mouth shut" about Mulligan's death, as she told two friends, which may very well have gotten her killed.[42]

O'Brien seems to suggest and opine that because the vast majority of the evidence that supports Hood's third party culprit defense does not qualify as "admissible evidence," it somehow doesn't count (Tr.II-94-95). This is plainly wrong for several reasons.

First, a prosecutor's opinion of the admissibility of exculpatory evidence does not alleviate her from her obligation to produce it. Second, the evidence was admissible because, depending on which evidence Hood sought to introduce, it all would have fallen into at least one category of admissible evidence, i.e., as a statement against penal interest, as an excited utterance, to show Kirk's state of mind, or as direct testimony from Ellis or Patterson.[43]

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[41] Letia Walker testified before the Ellis/Patterson Grand Jury that she had been threatened by Patterson's baby's mother "to keep [her] mouth shut for Terry." (Ex.25). This woman, Latasha, went to Walker's house and threatened to kill her if Patterson went to jail (Ex.25). She was also threatened by Patterson's friend, Joseph Matthews, who told her that they had to "stick together on this," and that "people better keep their mouths shut." (Ex.25). According to Walker, Matthews was "a real sneaky person" who would "do anything for Terry." (Ex.25). Finally, there were other girls who told her to "keep [her] mouth shut for Terry" and confronted her after "Terry called them and told them that [she] was running [her] mouth to the cops" (Ex.25).

[42] Kirk told Coleman and Douglas about her involvement in the Mulligan murder (R.376-377l Ex.14).

[43] Because Patterson and/or Ellis would have likely asserted their right against self-incrimination had they been called as a witness at trial does not make the evidence 'inadmissible' on its face.

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Third, the evidence would have been admissible simply because preventing Hood from the opportunity to introduce it would have deprived him of his Sixth Amendment right to present a complete defense. Indeed, it has long been held that evidence that may otherwise be considered hearsay may be admissible, "despite its failure to fall into any of our traditional hearsay exceptions, provided that the defendant establishes both that it '[i]s critical to [the defendant's] defense' and that it bears 'persuasive assurances of trustworthiness." Commonwealth v. Drayton, 473 Mass. 23, 36 41 (2015), S.C., 479 Mass. 479 (2018), *quoting* Chambers v. Mississippi, 410 U.S. 284, 302 (1973)(where excluded testimony "bore persuasive assurances of trustworthiness" and "was critical to [the defendant's] defense," "the hearsay rule may not be applied mechanistically to defeat the ends of justice").

Finally, all of the evidence was categorically admissible as third-party culprit evidence. "A defendant may introduce evidence that tends to show that another person committed the crime or had the motive, intent, and opportunity to commit it." Commonwealth v. Silva–Santiago, 453 Mass. 782, 800 (2009), *quoting from* Commonwealth v. Lawrence, 404 Mass. 378, 387 (1989).

There are two limitations to third-party culprit evidence. First, to be admissible, the evidence must "have a rational tendency to prove the issue the defense raises, and the evidence cannot be too remote or speculative." Commonwealth v. Morgan, 460 Mass. 277, 291 (2011); Commonwealth v. Scott, 470 Mass. 320, 327 (2014). Second, because third-party culprit evidence often consists of out-of-court statements offered for the truth of the matter asserted, namely that a third party is the true culprit, such evidence may be admitted if "`the evidence is relevant, will not tend to prejudice or confuse jurors, and there are other "substantial connecting links" to the crime.'" Commonwealth v. Keizer, 377 Mass. 264, 267 (1979) *quoting* Commonwealth v. Rice, 441 Mass. 291 , 305 (2004). *See* Mass. G. Evid. § 1105 (2014). Here, there was strong reliable

third-party culprit evidence, that would not have confused jurors, which had substantial connecting links the murders of Kirk and Brown. In fact, even O'Brien predicted that Weymouth "would eventually have been able to make the necessary showing" to introduce third-party culprit evidence that Ellis and/or Patterson killed Kirk and Brown (Tr.III-12).

"Arguing that a third-party was the true culprit is, of course, 'a time-honored method of defending against a criminal charge.'" Commonwealth. Steadman, 489 Mass. 372 (2022). Historically Massachusetts courts give "wide[, but not unbounded,] latitude to the admission of relevant evidence that a person other than the defendant may have committed the crime." Id. at 383, *quoting* Silva-Santiago, 453 Mass. 782, 800 (2009). Indeed, a judge's exclusion of third-party culprit evidence is an issue of constitutional dimension, and therefore examined on appeal independently, rather than for an abuse of discretion. Commonwealth v. Cassidy, 470 Mass. 201, 215 (2014). *See* Commonwealth v. Shakespeare, 493 Mass. 67 (2023)(murder conviction reversed where court found it was error not to allow a deceased witness's grand jury testimony into evidence based on hearsay objections because the evidence was admissible for constitutional reasons). Undoubtedly, most, if not all of the evidence supporting a third-party culprit in this case would have been admissible at trial.

B. Other evidence introduced at the hearing establishing the weakness of the Commonwealth's case.[44]

At the hearing, perhaps to demonstrate the strength of its case, the Commonwealth introduced a statement by a jailhouse informant, Gabriel Rojas (Ex.37). This statement destroyed the Commonwealth's theory with respect to Hood's motive to kill Kirk.

[44] Hood has already thoroughly briefed how underwhelming the Commonwealth's case was against him even in spite of his alleged confession and the ballistics match to another shooting months earlier.

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Assuming that Rojas was reliable, his statement completely contradicts the Commonwealth's motive. Hood allegedly told Rojas that he killed Kirk because "[s]he stole [his] cherry and [his] money," despite evidence from multiple sources that Hood and Kirk never dated, and that Hood had a son thus was obviously not a virgin (Ex.6,37,83). The allegation by Hood that one of the girls stole $2,000 from him was entirely inconsistent with what he had told the police motivated him to shoot her, which was that she refused to return his chain (Ex.5).

The Commonwealth also introduced a police report from a neighbor, Ada Jackson, who claimed that she saw a male leaving Kirk's apartment at 5:00 p.m. wearing a green jacket (Tr.III-122; Ex.70).[45] Jackson described the male she saw as 5'8", while Hood was 6' tall at the time of his arrest (Tr.II-58; Ex.70). Even if Jackson had positively identified Hood, which she did not, her statement merely provided confirmation that Hood was at Kirks that day wearing a green jacket and left. It simultaneously contradicted the Commonwealth's timeline.

Coleman reported that on the day Kirk was killed, she heard Hood in the background during a phone conversation that occurred between 2:00 p.m. and 4:00 p.m. (Ex.6). According to Douglas, Kirk subsequently came by his work at approximately 4:00 p.m. - 4:30 p.m. and met with him (Ex.14). She then left for her apartment, arriving 30 minutes later, and called Douglas, informing him that she was waiting for Ellis to pick her up (Ex.14). Approximately an hour later, Kirk called Douglas again and told him that Ellis had still not arrived (Ex.14). As such, by the Commonwealth's own timeline, Kirk was alive until at least 5:30 p.m.,[46] and likely well beyond after 6:00 p.m. This is beyond both the time when Jackson saw a male in a green coat leaving Kirk's apartment, and when Coleman heard Hood in Kirk's apartment (Ex.6,70). Hood's own

[45] Hood told police he wore a green jacket that day and one was seized during the execution of a search warrant at his residence (Ex.72,76).

[46] This does not account for any time Kirk spent visiting Douglas at work.

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statement to police confirmed that he did not return to Kirk's apartment a second time (Tr.III-131; Ex.14), thus by all accounts, it was likely Ellis, not Hood, who was the last person to see Kirk alive.

Conclusion

In light of each error argued herein individually, and taking them all under a totality of circumstances under a confluence of factors analysis, there is no question that Hood's rights were violated and that justice was not done. Hood implores this Honorable Court to grant his motion to vacate his guilty plea and requests a new trial forthwith.

Respectfully submitted,
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By his attorney,

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Date: 1/3/25

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Appeals Court No. 2025-P-0736

Commonwealth)
)
v.)
)
Craig Hood)

RECORD APPENDIX
VOLUME 4 OF 4

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
NO. 9384CR11566
NO. 9484CR10740

COMMONWEALTH

vs.

CRAIG HOOD

MEMORANDUM OF DECISION AND ORDER
ON DEFENDANT'S THIRD MOTION TO VACATE
GUILTY PLEAS AND FOR NEW TRIAL

On June 19, 1995, Craig Hood (Hood or Defendant) pled guilty to, among other charges, two counts of second-degree murder for the deaths of Celine Kirk (Kirk) and her sister, Tracy Brown (Brown) (together Victims). He has now filed his Third Motion to Vacate Guilty Pleas and for New Trial (Motion).[1] Hood argues that (i) the Commonwealth failed to disclose exculpatory material in violation of Brady v. Maryland, 373 U.S. 83 (1963); (ii) new evidence calls into question his plea; (iii) he was deprived of the effective assistance of counsel; and (iv) his plea was not knowing and voluntary because he was not privy to all of the evidence against him.

The Brady material consists of allegedly undisclosed information pertaining to the investigation of the murder of Boston Police Department (BPD) Detective John Mulligan (Mulligan) which was ongoing at the same time as the investigation of the murders of Kirk and Brown (Mulligan Investigation). The new evidence concerns a

[1] Hood filed three prior motions to vacate his guilty plea but withdrew the first without prejudice. Thus, this is the third motion presented to the Superior Court *for a decision*. For that reason, the Commonwealth styled its opposition as Commonwealth's Opposition to the Defendant's Fourth Motion to Vacate his Pleas and for New Trial.

corrupt ring of BPD officers and detectives, which included Mulligan and several BPD detectives involved in the Mulligan Investigation and the investigation into the Victims' murders. With respect to Hood's third and fourth arguments, Hood argues that his counsel was ineffective when he advised Hood to plead guilty without disclosing or discussing with Hood certain discovery material obtained from the Mulligan Investigation and that his guilty plea was not knowing and voluntary because he had not been provided the material from the Mulligan Investigation and was not aware of the new evidence.

After review of the briefs, I scheduled an evidentiary hearing in 2021. That hearing was continued at Hood's request after I allowed certain post-judgment discovery and permitted Hood to file a Second Supplemental Memorandum of Law in Support of his Motion. The Commonwealth subsequently filed a Supplemental Memorandum in Opposition to the Motion for New Trial.

I held evidentiary hearings over four days on September 15, 2023, November 3, 2023, May 23, 2024, and June 28, 2024 at which two witnesses testified: Hood's lawyer, Attorney Stephen Weymouth (Weymouth), and the Assistant District Attorney for Suffolk County who prosecuted Hood, Leslie O'Brien (ADA O'Brien). At the Commonwealth's request, and in the exercise of my discretion based on my understanding of the issues presented and the need to take evidence, I limited the evidentiary hearing to (i) the alleged failure to disclose Brady material from the Mulligan Investigation and (ii) the claimed ineffective assistance of counsel.[2]

[2] Briefing was not complete until January 3, 2025, when the parties filed their Post Hearing Memoranda (Papers 183 and 185).

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After consideration of the pleadings, the record appendix, the transcript of Hood's plea colloquy, the affidavits, and based on the factual findings I made after the evidentiary hearing detailed below, the Motion is **DENIED**.[3]

BACKGROUND

I. Commonwealth v. Hood

On November 16, 1993, a Suffolk grand jury indicted Hood on two counts of murder for the murders of Brown and Kirk in violation of G. L. c. 265, § 1; two counts of the illegal possession of a firearm in violation of G. L. c. 269, § 10(a); and one count of assault and battery by means of a dangerous weapon in violation of G. L. 265, § 15A (Docket No. 9384CR11566). On May 16, 1994, a Suffolk grand jury indicted Hood on two counts of assault and battery on a corrections officer in violation of G. L. c. 127, § 38B, and one count of assault and battery by means of a dangerous weapon in violation of G. L. c. 265, § 15A(b) (Docket No. 9484CR10740).[4]

On June 19, 1995, the Defendant appeared before the Superior Court (Rouse, J.) and pled guilty to two counts of second-degree murder, two counts of unlawful possession of a firearm, and two counts of assault and battery by means of a dangerous weapon. Judge Rouse sentenced Hood to an agreed-upon disposition: two consecutive

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[3] Hood filed four Memoranda of Law in connection with the instant Motion for New Trial: Defendant's Memorandum of Law in Support of his Third Motion for New Trial (Initial Memo) (Paper 105, filed July 2, 2020); Defendant's Supplemental Argument in Support of his Third Motion for New Trial and Request for an Evidentiary Hearing (Suppl. Memo) (Paper 120, filed January 26, 2021); Defendant's Second Supplemental Memorandum of Law in Support of Defendant's Motion for New Trial (Second Suppl. Memo) (Paper 153, filed October 17, 2022); and Defendant's Post-Evidentiary Hearing Memorandum of Law (Post Hearing Memo) (Paper 185, dated January 2, 2025 and docketed March 31, 2025). I have considered each and address here the arguments necessary to resolve the motion.

[4] The latter indictment related to an incident that occurred while Hood was in custody awaiting trial. Hood makes no substantive arguments regarding those charges.

terms of life in prison for the murders; a term of four to five years in state prison, concurrent with the life sentences, for unlawful possession of a firearm; and a term of seven to ten years in prison, concurrent with the life sentences, for assault and battery with a dangerous weapon. The two remaining counts of assault and battery on a corrections officer were placed on file. Weymouth represented Hood in connection with all the charges and Hood's change of plea.

A. Circumstances of Change of Plea

Hood was nineteen years old at the time he pled guilty and had completed school through the ninth grade. Hood stated that he understood the charges he faced, and the maximum sentences provided under the law for those charges. Weymouth told the Court that he was satisfied that Hood understood the terms of the agreed-upon disposition. The Court informed Hood that, based on the agreed-upon disposition, he would not be eligible for parole for thirty years, and Hood stated that he understood. Hood also told the court that he understood each of the rights he was giving up in connection with a plea of guilty including his right to a trial by jury, to remain silent, to present evidence, to challenge the evidence the Commonwealth presented, and his rights of appeal. After the Commonwealth stated the facts that it expected to prove should the case go to trial, which are recounted below, Hood was asked whether there was anything inaccurate in the Commonwealth's recitation of the facts. Hood answered, "No." When asked whether he admitted that all the facts stated by the Commonwealth were true, and if he committed the crimes to which he was pleading guilty, Hood answered, "Yes."

B. Summary of the Evidence Against Hood

At approximately 9:00 p.m. on September 29, 1993, a New England telephone operator took a call from a little boy who was crying. The operator also could hear the sound of an infant crying in the background. The operator's supervisors traced the call to 4 Oakcrest Road, Apartment 23, in the Mattapan section of Boston (4 Oakcrest) and

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notified the police. The police arrived and the little boy, Brown's son who was two years and eight months old, let the police into the apartment. His ten-month-old baby sister was sleeping in her crib. Police found Brown and Kirk dead. Brown, twenty-three years old, had sustained a single gunshot to the head and one to the arm. Kirk, eighteen years old, had sustained two gunshot wounds to the head.

After the murders, the police interviewed several witnesses including Nikki Coleman (Coleman), Kirk's close friend. Coleman told the police that she had been on the telephone with Kirk the day of the murder between 2:00 and 4:00 p.m. and heard Hood's voice in the background. Coleman also told the police that Kirk said that Hood, whom Kirk and Coleman had known for some months, was present with Kirk at that time. Coleman overheard Kirk and Hood arguing over a piece of jewelry – a chain – that Hood had given to Kirk to wear. Hood demanded the chain back, and Kirk either refused or neglected to give it back. Although Coleman could not recall Hood's last name, she gave the police his address in Brockton, and the police confirmed that Hood lived at that address. The police showed Coleman a photograph of Hood, and she identified Hood as the person she overheard arguing with Kirk about the chain the day of the murders.

The police learned that Hood had several outstanding warrants, including an arrest warrant for a shooting that occurred on June 15, 1993. On that day, Hood confronted the shooting victim, Glenn McLaughlin (McLaughlin), at some specific location and demanded that McLaughlin leave the area. When McLaughlin refused, Hood shot McLaughlin once in the leg with a twenty-five-caliber handgun. The police obtained the bullet, which had passed through McLaughlin's leg. The Commonwealth compared the bullet that struck McLaughlin with the three bullets taken from Brown and Kirk. The BPD Ballistics Unit concluded that the bullets all had been fired from the same gun.

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Hood was arrested for the McLaughlin shooting on October 1, 1993 at around 4:00 a.m. and brought to the Area E-18 police station in Boston. The police decided not to question Hood at that time. The next day, Hood asked to speak with the detectives who had arrested him and gave a detailed confession to the shooting of Brown and Kirk. Hood's confession was consistent with the physical evidence at the scene of the murders and included facts that one would expect only the perpetrator to know. Hood also described what he was wearing during the shooting – a green jacket and black boots – which eventually were located and tested positive for blood.

Hood described the argument he and Kirk had over the chain. Hood said that, after Kirk refused to return the chain, she began to escort Hood to the door. Hood then shot her in the head. Brown fled into her daughter's bedroom, and Hood said he shot her twice. Hood said that he shot Brown because Brown was a witness and he had to eliminate the witness. Before he was pushed out of the apartment by Brown's two-year-old son, Hood shot Kirk again in the head.

On April 5, 1994, after he was arrested and in custody in the Suffolk County jail, Hood failed to comply with an order by a corrections officer to return to his cell. He threw a cup of juice at the officer and punched the officer in the face. In the ensuing melee, Hood dragged the officer to his cell and kicked the officer in the face and torso. Later that same day, Hood attacked another officer and punched that officer in the face.

C. Motions for New Trial

Hood filed his first motion for new trial seeking a decision from the Court in 2001 (Paper 70, filed March 29, 2001).[5] Hood argued that he lacked the proper mental capacity to enter the plea and that the element of malice aforethought was not properly explained to him. The Superior Court (Rouse, J.) denied the motion without an

[5] As noted, Hood filed a motion for new trial in April 1996, but he withdrew it without prejudice in August 1996.

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evidentiary hearing. The denial of that motion for new trial was affirmed on appeal. See Commonwealth v. Hood, 56 Mass. App. Ct. 1106 (2002). Hood filed a second motion for new trial in 2009 arguing that his trial counsel was ineffective in allowing Hood to plead guilty without first arguing a motion to suppress Hood's confession and in failing to explain the sentence structure of the plea properly. The Superior Court (Rouse, J.) denied the motion without an evidentiary hearing. The denial of that motion was affirmed on appeal. See Commonwealth v. Hood, 87 Mass. App. Ct. 1105 (2015).

II. Commonwealth v. Ellis

Addressing the new evidence on which Hood relies in connection with the instant motion requires an understanding of Commonwealth v. Ellis (Ellis Case). The Ellis Case involved Mulligan's murder on September 26, 1993, three days before Brown and Kirk were murdered. Mulligan was shot while working a detail outside of a Walgreens in the Roslindale neighborhood of Boston. The Ellis Case overlaps with this case because Sean Ellis (Ellis) was identified as a suspect in Mulligan's murder as a result of the investigation into the murders of Brown and Kirk.

Ellis had been living or staying with his cousins, Kirk and Brown. The police questioned Ellis after Brown and Kirk were murdered because his identification was found in the apartment along with a receipt for a package of diapers. Ellis told the police that he, Kirk, and Terry Patterson (Patterson) had gone to the Walgreens in Roslindale to get diapers at around 3:00 a.m. on the night that Mulligan was killed. Thus, when he was interviewed about the Kirk and Brown murders, Ellis placed himself and Kirk at the scene of Mulligan's murder at around the time Mulligan was shot and killed. As a result of that admission, the police focused on Ellis as a suspect in the Mulligan murder. Ellis was ultimately tried three times: in January 1995, March 1995, and September 1995. The first two trials resulted in mistrials. Ellis was convicted

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of murdering Mulligan in September 1995.[6] That conviction was affirmed on appeal. Commonwealth v. Ellis, 432 Mass. 746 (2000) (Ellis I).

The Supreme Judicial Court (SJC) summarized the evidence presented against Ellis at trial. Commonwealth v. Ellis, 475 Mass. 459, 460–463 (2016) (Ellis II). Relevant here, a single eyewitness, Rosa Sanchez, identified Ellis. Sanchez testified she saw Ellis crouching by Mulligan's car at around 3:05 a.m. Id. at 460-461. When she left the Walgreens, Sanchez saw Ellis with another man by a pay phone near the vehicle. Id. at 461. Mulligan, who had been shot five times in the face, and whose service weapon had been taken, was found at 3:49 a.m. by a store clerk who called 911. Id. at 461-462. "Several witnesses recounted seeing two males whose descriptions were consistent with [Ellis] and Patterson in the area of the Walgreens between 3:00 and 3:30 A.M., but Sanchez was the only witness who later identified either the defendant or Patterson." Id. at 462.

Ellis's girlfriend testified that, on the morning of September 30, the day after Kirk and Brown were murdered, she went with Ellis to his apartment – which was also the scene of Kirk's and Brown's murders. Id. Ellis went inside and returned with a bag and two guns. Id.[7] After a search, those guns were found by Boston police recruits and testing revealed that one was the weapon used to murder Mulligan. Id. Detectives Walter Robinson, Kenneth Acerra, and John Brazil, among others, investigated the Mulligan murder. Id. at 462-464. Detectives Robinson and Acerra participated in an unusual and arguably highly suggestive identification procedure with Sanchez which

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[6] Patterson was convicted in March 1995 – before Hood's scheduled trial.

[7] The SJC noted that the apartment had been the scene of Brown and Kirk's murders and stated: "On September 29, two cousins who lived with the defendant were murdered in his apartment. The jury did not learn of this killing. There is no evidence connecting their murder to the defendant." Id. at 462 n.4.

first resulted in the identification of someone other than Ellis in a photo array. Id. at 462-463.

On September 14, 1995, after Hood had pled guilty to the murders of Kirk and Brown, Ellis was convicted of Mulligan's murder. In 1998, Ellis filed a motion for new trial arguing that unrelated criminal conduct of Detectives Robinson, Acerra, and Brazil required a new trial. In particular, all three detectives had been implicated in schemes to submit false search warrant applications and illegally seize money and property while executing those fraudulent search warrants. Detectives Robinson and Acerra had pled guilty to federal indictments stemming from that scheme. Ellis argued as well that the BPD anticorruption unit was investigating Detective Robinson and Mulligan for an alleged robbery of drug dealers in 1991. The Superior Court denied Ellis's motion for new trial, and the SJC affirmed. See Ellis I.

In 2013, Ellis filed a second motion for new trial, which was allowed. Relevant here, much of the evidence in Ellis II that led to the successful new trial motion concerned Mulligan's involvement with Detectives Robinson, Acerra, and Brazil in criminal conduct. In particular, the newly discovered evidence included the following:

(i) On September 9, 1993, Mulligan had participated in the theft of money and marijuana from a drug dealer with Detectives Robinson and Acerra.

(ii) In November 1993, two FBI informants reported that Mulligan regularly "shook down" pimps, prostitutes and drug dealers for money, extorted other police officers for money, dealt drugs, blackmailed people, and "committed murder as a cop."

(iii) A detective originally assigned to the Mulligan Investigation told several other detectives that a corrections officer had a "beef" with Mulligan because Mulligan would not leave his fourteen-year-old daughter alone, knew Mulligan worked the detail at Walgreens and slept in his car, and had threatened to kill Mulligan by shooting him between the eyes at Walgreens.

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(iv) "[A]n anonymous tipster had reported that, eighteen months earlier, the victim and Robinson had robbed two drug dealers at gunpoint," a tip which the BPD's anti-corruption division rated as "good."

(v) An informant, Ronald Hanson, told detectives that Mulligan "took drugs from the girlfriend of one of the killers and told her if her boyfriend wanted the drugs back he would have to come and see [the victim] or he'd arrest her" and "that [o]ne of the girls killed in Mattapan was the girl friend," apparently referring to one of [Ellis's] cousins who was killed on September 29, 1993.

(vi) Several hotline tips provided to the BPD the day of Mulligan's murder identified third-party culprits which, except for one, had not been investigated.

Ellis II, 475 Mass. at 467-468.

The Superior Court (Ball, J.) "concluded that these six categories of newly discovered evidence showed that the investigators 'failed to vigorously pursue other leads' and, when combined with evidence of the 'conflict of interest' of Acerra, Robinson, and Brazil, formed the basis for 'a potentially powerful' defense under Commonwealth v. Bowden, 379 Mass. 472, 485–486, 399 N.E.2d 482 (1980)." Ellis II, 475 Mass. at 470. Judge Ball described the conflict of interest as follows:

> Detectives Brazil, Acerra, and Robinson had a personal interest in solving [the victim's] homicide as quickly as possible before any members of the ... [t]ask [f]orce, who were not part of the corruption scheme, or anyone else, could look further into *why* [the victim] may have rubbed people the wrong way or was rumored to be a 'dirty cop.' In other words, they needed to prevent others from finding out that they and [the victim] had been engaging in illegal activities.

Id. at 471 (emphasis in original). In affirming, the SJC rejected the Commonwealth's argument of estoppel, noting that, when it had affirmed the denial of Ellis's first new trial motion, it

> did not know . . . that these detectives had been engaged *with the victim* in criminal acts of police misconduct as recently as seventeen days before the victim's murder. The complicity of the victim in the detectives' malfeasance fundamentally changes the significance of the detectives' corruption with respect

> to their investigation of the victim's murder. . . . [W]ith the victim's complicity, these detectives would likely fear that a prolonged and comprehensive investigation of the victim's murder would uncover leads that might reveal their own criminal corruption. They, therefore, had a powerful incentive to prevent a prolonged or comprehensive investigation, and to discourage or thwart any investigation of leads that might reveal the victim's corrupt acts.

Id. at 475-476 (emphasis in original).

III. Findings of Fact

Based on the testimony and exhibits introduced at the evidentiary hearing on this motion, the credibility determinations I have made, and the reasonable inferences I draw therefrom, I find the following facts.

A. Counsel

Weymouth passed the bar in 1980. He promptly began practicing criminal defense. In the approximately thirteen years before he represented Hood, Weymouth had handled numerous serious cases in Superior, District, and Juvenile court including robbery, assault, and rape. At the time he was appointed to represent Hood, he had been approved to represent defendants charged with murder for two years.

During his representation of Hood, Weymouth visited the jail and met and consulted with Hood. Weymouth had a good relationship with Hood, had no concerns about Hood's competency, and believed Hood understood the case against him. Weymouth explained to Hood the elements of the crimes with which he was charged and Weymouth's efforts to get discovery from the Mulligan Investigation.

ADA O'Brien was an assistant district attorney in the Suffolk County District Attorney's Office (SCDAO) for fifteen years from 1984 -1999. In 1993, when Hood was indicted, she worked in the homicide unit. ADA O'Brien was assigned to handle the Kirk and Brown murder case, at around the time of or shortly after Hood's arrest. ADA O'Brien's supervisor was Phyllis Broker (ADA Broker), who handled the Ellis case.

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B. Hood's Defenses

Weymouth knew that Kirk was Ellis's cousin and was alleged to have been with Ellis the night of the Mulligan murder. Weymouth intended to argue that whoever killed Mulligan also killed Brown and Kirk. Accordingly, in preparation for Hood's trial, and before Hood's plea of guilty, Weymouth sought discovery from the SCDAO to support a third-party culprit defense, namely, discovery from the Mulligan Investigation concerning Ellis, and his co-defendant Patterson, including all information or evidence that placed either at the Victims' apartment after the Mulligan murder, all field investigation observations of Ellis and Patterson, and all police reports that led to their indictments for Mulligan's murder.

At some point, Hood told Weymouth that Ellis confessed to killing Kirk and Brown but asked Hood to confess to their murders because Hood would not be convicted.[8] Because Weymouth had no competency concerns and did not believe he could pursue a defense based on lack of criminal responsibility, and because of what Hood had told him about Ellis's role in the murders of Kirk and Brown, Weymouth explored the possibility that Hood had given a false confession.

Weymouth hired two experts, Drs. Carol J. Ball and Allen J. Brown, to explore whether, based on certain mental health and other emotional issues, Hood *may* have been vulnerable to manipulation in connection with his confessions. Dr. Ball conducted psychological testing and determined that Hood may have been in a preliminary phase of a schizoaffective disorder, although she did not diagnose one, and that he suffered from post-traumatic stress disorder (PTSD). She concluded that, as a result of Hood's childhood trauma from watching his mother die at his father's hand, his "level of functioning has been greatly impaired and his ability to see things more objectively has

[8] I have no information before me about when this conversation may have occurred, if it did. The only information is Weymouth's testimony regarding what Hood told him.

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been diminished." She also concluded that, given his "apparent simplistic value system, it was *possible* that he would have agreed to 'help someone out' by admitting to an offense he did not commit." (Emphasis added).

Dr. Brown found that the results of a psychological test administered to Hood indicated that Hood had "emotional scars" consistent with PTSD. Dr. Brown made no clinical diagnosis of a mental health disorder. Dr. Brown concluded that Hood confessed to the murders to live up to his mother's last words, which was to not get people into trouble but to help them out.

Before trial, the Commonwealth moved *in limine* pursuant to Commonwealth v. Lanigan to preclude Dr. Brown from testifying that Hood had falsely confessed arguing that the opinion was not scientifically reliable. That motion was not acted on prior to the plea.

The Commonwealth retained its own expert, Dr. Martin J. Kelly. Dr. Kelly interviewed Hood and reviewed relevant medical, psychiatric, psychological and legal records. He found "no evidence of a psychiatric condition which would deprive Mr. Hood of the capacity for a knowing, intelligent and voluntary waiver of his rights." With respect to Hood's alleged promise to his mother not to get people in trouble and help them, Dr. Kelly concluded it would "not constitute a condition which would remove the requisite mental capacities for waiver of rights."[9]

When Hood pled guilty, Weymouth had not yet decided whether to pursue a false confession defense at trial. Weymouth was not persuaded he could raise any mental health / false confession defense based on the conclusions his experts had

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[9] Dr. Kelly also found Hood to be competent to stand trial and that he did not suffer from any mental disease or defect which would result in "the lack of substantial capacity to appreciate the wrongfulness or criminality of his conduct" or which "resulted in the lack of substantial capacity to conform his conduct to the requirements of the law."

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reached. In addition, to present that defense, Weymouth believed that Hood would be required to testify. Based on conversations with Hood, Weymouth understood that Hood was not willing to take the stand and implicate Ellis. Weymouth did not know why Hood would not do so.

Weymouth considered it significant that the same officers were investigating the murders of Kirk and Brown and the murder of Mulligan and would have considered impeachment material regarding those officers to be relevant in the Hood case. Weymouth recalled that several detectives, including Marquart, Robinson, Keeler, Acerra, and Brazil, were involved in both investigations but could not recall specifically the extent of their involvement. Weymouth was aware that the BPD appeared to be investigating both the murders of Brown and Kirk and Mulligan simultaneously and that made Weymouth think he was "on to something" with respect to his third-party culprit defense. However, without more, Weymouth would not have been able to impeach a police officer witness solely on their role in both investigations.

Although she would have opposed the admissibility of third-party culprit evidence, ADA O'Brien believed that Hood would be able to satisfy the Court and present third-party culprit evidence related to Ellis at trial.

C. Discovery Provided to Hood

ADA O'Brien followed her general practice with respect to providing discovery to Hood's counsel. She compiled material received from BPD detectives and others into discovery packages and her secretary typed a cover / transmittal letter describing what each discovery package contained. ADA O'Brien reviewed the discovery packages to insure they included everything that was described in the accompanying transmittal letter. ADA O'Brien usually hand delivered the discovery and accompanying transmittal letter to Weymouth in court.

There was overlap in the members of the BPD assigned to investigate the Mulligan murder and the murders of Kirk and Brown. Therefore, if BPD reports related

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to both cases, they would be turned over to both ADA Broker, the ADA overseeing the Ellis case, and to ADA O'Brien. In addition, if ADA Broker received information that she believed was relevant to the Hood investigation and case, she would give a copy to ADA O'Brien and vice versa. Likewise, as ADA O'Brien located material in the Ellis case file that overlapped with the Hood case, ADA O'Brien provided it to Weymouth.

Specific discovery material provided to Weymouth was detailed in numerous production letters including: Ex. 10, a nine-page discovery letter dated January 12, 1994 detailing 115 separate items of discovery;[10] Ex. 17, dated February 3, 1994 containing the BPD report of Hood's interview; Ex. 18, dated November 29, 1994 containing a report of the interview of Joseph Matthews and the statements of Robert Matthews and a confidential informant; Ex. 22, dated November 30, 1994 detailing seven items of discovery; Ex. 23, dated December 5, 1994 detailing seven items of discovery; Ex. 30, dated January 11, 1995 containing a tape regarding Hood; Ex. 31, dated January 12, 1995 containing a page from Hood's statement; Ex. 32, dated January 17, 1995 containing seven items of discovery; Ex. 33, dated January 24, 1995 containing a statement Hood allegedly made to BPD Officer Roberto for which the Form 26 was missing;[11] Ex. 34,

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[10] The material ADA O'Brien provided to Weymouth on January 12, 1994 contained inculpatory evidence including a report of an interview of Gilbert Rojas who said that, when he was in jail in connection with a restraining order, he overheard Hood say he killed one girl because "[s]he stole my cherry and my money" and the other girl because "she knew I had killed the other one." Hood's argument that this statement undercut the Commonwealth's theory of the case, which was that he murdered Kirk and Brown because of a chain, is not persuasive. The statement essentially corroborates Hood's confession albeit with a slightly different motive.

[11] The disclosed statement is as follows:

> On January 23rd, I interviewed Officer David Roberto of Area A. He informed me that he and Officer Carlos Lara were the officers assigned to transport Craig Hood from Area E to the I.D. Unit for booking. Officer Roberto tells me that en route Craig Hood asked, "What can you get for killing a girl?" Hood later stated

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dated February 1, 1995 containing two items of discovery including the BPD report of the arrest of Hood; Ex. 35, dated February 2, 1995 containing records received from NET Security; Ex. 36, dated February 8, 1995 containing ten items of discovery; Ex. 38, dated February 9, 1995 containing a letter intercepted from the Barnstable House of Correction regarding a homicide;[12] Ex. 40, dated February 15, 1995 containing reports from a Trooper Plath; Ex. 42, dated March 2, 1995 containing two sets of medical records; Ex. 43, dated March 8, 1995 containing an additional set of medical records; Ex. 44, dated March 21, 1995 containing a report from a Detective Washington; Ex. 45, dated March 7, 1995 containing reports from the Tampa Police Department relating to the death of Gaile Hood; Ex. 51, dated May 4, 1995 containing statements from two individuals; Ex. 55, dated May 12, 1995 containing additional disclosures regarding Hood's statements and confession; and Ex. 57, dated May 23, 1995 containing an additional report concerning the McLaughlin shooting and a photo array.[13]

I find that Weymouth received the discovery referenced in those letters both because I credit ADA O'Brien that she checked that the production matched the transmittal letters, and because I credit Weymouth that he would have communicated with ADA O'Brien if he did not receive something that was identified on a transmittal letter to be sure he got it.[14] Weymouth was not prevented by any Court order from

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to Officer Lara, "Do you know how to kill a girl?" Officer Lara responded, "You shoot her in the chest?" and Hood answered, "You shoot her in the head."

[12] In that letter, from Hood to a person named Nathaniel Chaney dated March 5, 1994, Hood wrote about a person who was threatening to beat him in jail and said, "I guess I'll catch another body." Hood also disclosed that he saw his father drown his mother when Hood was approximately 6 years old and that the memory causes Hood to "snap" when people "aggravate" him because he does to them what he wants to do to his father.

[13] McLaughlin was listed on the Commonwealth's witness list.

[14] I do not credit Hood's argument that, because there was a delay in the provision of material related to the Mulligan Investigation, see *infra*, I should not find that the

discussing the material provided to him as referenced in the above discovery letters with Hood, or anyone else, including investigators.

Further, I find that ADA O'Brien provided discovery in the Hood case promptly after it was provided to her. However, some material was not provided to her promptly. For example, the letter Hood had sent from jail was not provided to ADA O'Brien for eleven months. The additional statement attributed to Hood before and after his 1993 confession was not provided to ADA O'Brien until May 1995. As a result of these late disclosures, on March 7, 1995, Weymouth filed a Motion Concerning Discovery claiming that he had recently been provided discovery and arguing that, because of the late disclosures, he was "concerned that agents of the Commonwealth were not turning material over to the ADA" which placed Hood at a disadvantage in preparing for trial. That motion was denied after hearing that same day.

D. Production of Material from Mulligan Investigation

As discussed, Weymouth's third-party culprit defense centered around Ellis. Therefore, he sought information from the Commonwealth about the Mulligan Investigation.[15] As early as January 7, 1994, Weymouth asked the Commonwealth to

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material identified in the production letters was provided to Weymouth. The Mulligan Investigation material was dealt with differently and does not change my finding – based on both ADA O'Brien's and Weymouth's testimony – that material purported to be provided and as detailed in ADA O'Brien's discovery production letters was given to Weymouth.

[15] Weymouth had information from the interview of Joseph Matthews that Ellis said that "the boyfriend was fighting the girlfriend and the older sister jumped in and stabbed him and he shot and killed them both." (Ex. 19). He also had information that Dana Jones had threatened to kill Kirk. Therefore, Ellis, Patterson, Dana Jones, and the unidentified boyfriend referenced in the Matthews interview were all potential third-party culprits. I reasonably infer that Weymouth focused on Ellis because of Hood's statement that Ellis asked Hood to confess.

provide all discovery material provided to counsel in the Ellis and Patterson cases.[16] On April 28, 1994, Weymouth filed a motion seeking all discovery in the Ellis case.[17] In particular, Weymouth sought any information that placed Kirk at the scene of Mulligan's murder because he believed that information would exculpate Hood as it would provide a motive, namely, that whoever shot Mulligan would want to silence Kirk.[18]

In July 1994, Weymouth filed a Motion to Compel discovery from the Mulligan Investigation because he did not believe he had been provided the material he sought. In that motion, Weymouth detailed the information he had in his possession that he found significant to Hood's third-party culprit defense:[19]

> On September 27, 1993, Ms. Kirk told a friend that she was at the scene of Detective Mulligan's murder with Sean Ellis. She informed her friend that she knew who had shot Detective Mulligan and that she was acquainted with the person who had shot Detective Mulligan. The friend described Ms. Kirk's demeanor . . . "as being very nervous, distant and not herself."
>
> On September 28 and on September 29, 1993, Ms. Kirk continued to talk to her friend about the shooting of Mulligan. She told him that the Volkswagon [sic] Rabbit automobile depicted in a newspaper article about the Mulligan murder was just like the one her friend had in his shop. She also told her friend that she

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[16] The letter is misdated as 1993 but was sent and received in January 1994.

[17] Before trial, Weymouth also filed motions for exculpatory evidence, radio communications, statements, any criminal records of Commonwealth witnesses, physical evidence and photographs, scientific reports, police reports, percipient witnesses, expert evidence, a list of Commonwealth witnesses, statements of Commonwealth witnesses, the criminal record of McLaughlin, and several motions for funds. (Exs. 99-116).

[18] At that time, Weymouth had a copy of the trial transcript from the first trial in the Ellis case.

[19] As discussed next, Hood claimed in his Initial Memo that much of this information had not been provided to Weymouth. The July 1994 Motion to Compel shows that Weymouth was in possession of a substantial amount of that information and a substantial amount of information supporting his third-party culprit defense.

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had observed one of the men she was with on the night Mulligan had been shot speaking with Mulligan.

On September 29, 1993, Kirk visited her friend at his job leaving sometime between 4:00 and 4:30 P.M. She told him that she did not want to return to the apartment in Mattapan. Her friend stated Kirk did return to the apartment in Mattapan, and she called him sometime between 4:30 P.M. and 5:00 P.M. During this conversation Kirk informed her friend that Sean Ellis was going to come by to pick her up from the apartment.

In addition, when officers from the Boston Police Department responded to the apartment in Mattapan where the bodies of Kirk and Brown were discovered, they found the two-and-one-half-year-old son of Tracy Brown. During an interview with the child, the child stated that Sean had hurt his mother.

On November 21, 1994, Weymouth was quoted in an article published in the Boston Herald that he "believes documents in the case of slain Boston Police Detective John J. Mulligan could implicate one of his killers in the slayings of the two Mattapan sisters last year." Weymouth purportedly told the reporter that the discovery in the Mulligan case was "due to be released to him Dec. 5" and "could show Sean Ellis – and not Hood – is responsible for murdering the two women." Weymouth also is quoted in the article saying, "I expect the commonwealth's materials will show there were people out there in the world who wanted to get rid of Celine Kirk, including Sean Ellis . . . . She apparently was at the scene of Mulligan's murder. Was it just coincidence she was killed just afterwards?" The Herald article indicated that the Mulligan Investigation materials "were packaged and ready to be turned over to Weymouth following a September 12 hearing, but [ADA] Broker did not want them released until after her opening statements in the Ellis and Patterson cases" which she was due to give on December 5. Finally, the article quotes Ellis's counsel as being opposed to production and any "attempt to affix any blame on Mr. Ellis for the murders of those two young women."

In December 1994, ADA O'Brien went into the District Attorney's office, was given full access to the Ellis case file, and compiled discovery from the Mulligan

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Investigation to give to Weymouth. She copied anything she saw that arguably could have any relationship to Hood's case. While BPD reports often indicated they related to both cases and there was significant overlap, in selecting material for production, ADA O'Brien did not rely on the BPD numbering system or the titles of reports but reviewed the body of each report to determine if they related to the Hood case. As noted above, all the material that related to the Hood case – that is, all the material listed on the second page of ADA O'Brien's December 5, 1994 discovery letter – was produced to Weymouth in December 1994. Weymouth was not prevented by any Court order from discussing the material listed on the second page of the December 5, 1994 discovery letter with Hood, or anyone else, including investigators.

ADA O'Brien also gathered and photocopied additional material relating to the Mulligan Investigation that did not, on its face, relate to the Hood case for production to Weymouth. She described that material in her December 5, 1994 letter as follows:

> The package at this point consists of approximately two thousand pages. It includes: all police reports relating to the death of John Mulligan now on file, approximately 200 in number; all cadet reports re evidence searched; approximately 35 transcribed witness interviews; approximately 600 pages of grand jury testimony; 130 pages of police "hotline" tips; all crime lab, fingerprint, and ballistics reports, and; miscellaneous other documents. You should be aware that while I have been reviewing and assembling these materials, I have been making every effort to pull out and forward any materials that appear to be related in any fashion to the murders at 4 Oakcrest Street. Some of these materials you have already received. More are included with this letter.

(Ex. 24).

On December 5, 1994, at ADA Broker's request, ADA O'Brien emailed Ellis's counsel, Attorney Norman Zalkind, and informed him that she would be producing the Mulligan Investigation material to Attorney Weymouth and told him that, if he wanted to oppose production, he should let ADA O'Brien know by 10:00 a.m. on December 7, 1994. Attorney Zalkind's partner responded to ADA O'Brien on December 7, 1994, as follows:

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> We received your letter to my partner, Norman Zalkind, in the middle of hearings yesterday before Judge Banks in the Ellis case. We do oppose turning over grand jury and other discovery materials from the Ellis case to Mr. Hood's attorney at this time. We would not oppose turning over such materials after our case has been submitted to a jury. We will be in Courtroom 914 this morning; we would like an opportunity to review with you what you plan to provide to Mr. Hood's counsel and an opportunity to be heard on the issue before you turn anything over.

The Court (Banks, J.) presiding over the Ellis case ultimately declined to issue any order or "get involved."

Weymouth's request for discovery from the Mulligan Investigation was next addressed on March 30, 1995. At that hearing, the Court (Hamlin, J.) ordered that the discovery in the Ellis case be provided to Weymouth but only "at the conclusion of the Ellis case." On April 20, 1995, after the second jury hearing the Ellis case was unable to reach a verdict and a mistrial was declared, the Court (Hamlin, J.) again heard from counsel regarding the production of discovery from the Mulligan Investigation. At this hearing, the Court ordered that the Mulligan Investigation material be provided to counsel only and not to anyone else, including Hood.[20]

ADA O'Brien assembled all the Mulligan Investigation discovery – without limitation – and described it in her March 21, 1995 transmittal letter. Weymouth received the Mulligan Investigation material listed in the March 21, 1995 letter (Ex. 49)

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[20] The Commonwealth did not oppose production of discovery from the Mulligan Investigation. Rather, Ellis's lawyers opposed production and pressed for the protective order based on their concerns the discovery would be made public which would affect Ellis's right to a fair trial. That concern was premised, in part, on the Herald article discussed above. Weymouth did not object on the basis of a lack of standing. I reasonably infer that he did not do so because he expected the protective order to be lifted prior to any trial in the Hood case. Indeed, the docket in the case indicates that the Hood case was not scheduled for trial in January 1995 but was set for trial in May 1995. On May 15, 1995, it was "returned to the First Session" for reassignment.

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in April 1995, more than a month before Hood pled guilty. Weymouth cannot identify any specific discovery from the Mulligan Investigation that he did not receive. Although he testified that it was "possible" that the material and information reflected in ADA O'Brien's discovery letters was not received, as noted previously, it was Weymouth's practice to review material received from the Commonwealth and he would have reached out to ADA O'Brien's office if there was anything listed in a discovery letter that he did not receive. ADA O'Brien does not recall Weymouth asking for any additional information or raising any concerns about not having been provided material listed in the discovery letter. I find that Weymouth received all the material listed in the December 5, 1994 letter (Ex. 24) and the March 21, 1995 letter (Ex. 49).

Weymouth did not review or discuss the discovery from the Mulligan Investigation that was subject to the protective order with Hood prior to the change of plea hearing in June 1995 because of the Court's order. Weymouth cannot recall any specific material that he received that he believes he "should" have discussed with Hood. Had there been any such material, namely, material from the Mulligan Investigation that Weymouth believed he should discuss with Hood, he would have asked the Court to lift the protective order. He did not do so. Weymouth discussed all the other discovery that he had received that was not subject to the Court's order with Hood who appeared to Weymouth to understand its significance.

E. Specific Alleged Undisclosed Brady Material

In his Initial Memo and his March 2020 affidavit, Hood identified ten specific items of alleged Brady material he claims he was not provided before he pled guilty.[21] As to those ten items, a-c and e-k listed and described in the Memo and affidavit, I find

[21] The material is listed as items "a" to "k" in both the Memo and the affidavit, but item d consists of the "items mentioned in 1-6 of the findings in Commonwealth v. Ellis," which I discuss below.

that the Commonwealth provided the material to Hood via his counsel and that none of it was subject to the Court's protective order.[22]

Andrew Tabb. With her January 12, 1994 discovery letter, ADA O'Brien gave Weymouth Detective Kenneth Dorch's (Dorch) report dated October 8, 1993. That report memorializes information patrol officer Andrew Tabb gave to Dorch regarding conversations Tabb had with members of the Hansborough Street Gang on October 4, 1993 regarding the Mulligan murder, "Terry Hood's" role in the murders and plan to flee, and the gang members' speculation that the Mulligan murder was related to the "Oakcrest Rd. murders" because Terry wanted the gold chain to fund his flight. (Exs. 10, 13).

David Murray. In January 1994, ADA O'Brien gave Weymouth a report by Sergeant William Mahoney memorializing David Murray's (Ellis's uncle) October 1, 1993 statement to Detective John Brazil. Further, with her November 29, 1994 discovery letter, ADA O'Brien gave Weymouth a transcript of Murray's statement in which, among other things, Murray relayed his feelings that Ellis was at the scene of the Kirk and Brown murders, was in a panic, dialed 911, and gave the phone to Brown's two-year-old son. (Exs. 10, 76, 77).

Dana Jones. In January 1994, ADA O'Brien provided Weymouth with Nikki Coleman's October 1, 1993 transcribed statement in which she said that Kirk told her on the telephone that Kirk's former boyfriend, Dana Jones, was out of jail and that Jones said that he was going to kill Kirk. Weymouth testified he specifically recalled the information about Dana Jones. (Exs. 10, 11).

Prentiss Douglas. On January 12, 1994, ADA O'Brien gave Weymouth another report written by Dorch memorializing an October 15, 1993 interview of Prentiss Douglas in which Douglas told the police that Kirk visited him on September 27, 1993,

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[22] The undisclosed material is detailed on pages 18 and 19 of Paper 105.

appeared nervous, and told Douglas she knew who had shot Mulligan. Douglas also told the police that Kirk visited him the next two days, provided information about the Volkswagen Rabbit associated with the Mulligan murder, and told Douglas that she was afraid to go home. As shown above, Weymouth included information police obtained from Douglas in his Motion to Compel and testified he recalled reviewing the report of Douglas's statements. (Exs. 10, 14).

Joseph Matthews. On November 29, 1994, ADA O'Brien gave Weymouth a report written by Detective John McCarthy regarding an interview of Joseph Matthews in which Matthews told police that Ellis said Kirk's boyfriend killed Kirk and Brown. Weymouth had other information identifying Kirk's then boyfriend as Kurt Headon.[23] (Exs. 18, 19, 83).

Ellis's Girlfriend. On December 5, 1994, ADA O'Brien provided Weymouth with Letia Walker's (Ellis's girlfriend) grand jury minutes which disclosed that (i) Walker had been threatened, including by Patterson's girlfriend, to "keep her mouth shut about the Mulligan murder;" (ii) Ellis told Walker that, before she died, Kirk had been beaten badly and pistol whipped; and (iii) Ellis had gone into 4 Oakcrest and removed two firearms. (Exs. 24, 25). In addition, by the time of Hood's plea, Weymouth had the transcript of Walker's testimony from the first Ellis trial. (Ex. 97). Additional information in Weymouth's possession also disclosed that Ellis had removed the firearm from 4 Oakcrest. See Comm. Post Hearing Memo at 10-11, n.10.[24]

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[23] Specifically, Weymouth possessed a report written by Detective Frederick Waggett summarizing an October 12, 1993 interview of Kurt Headon. During the interview, Headon identified himself as Kirk's current boyfriend. (Ex. 83).

[24] In his affidavit, Weymouth averred that he reviewed Ellis II and the underlying Superior Court decision and formed a "belief" that a great amount of the discovery material he had requested was not included in the material he was allowed to review. Weymouth claimed not to recall receiving (i) witness statements that indicated that Ellis entered Brown's apartment after the murders of Brown and Kirk and removed firearms

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F. Additional Inculpatory and Exculpatory Evidence

In addition to what the Commonwealth disclosed at the plea hearing regarding the evidence on which the Commonwealth would rely if the case went to trial, ADA O'Brien testified as to the additional inculpatory evidence provided to Weymouth prior to the plea, including that Kirk and Brown's neighbor, Ada Jackson, saw a black male wearing a green – army fatigue colored – jacket leaving Kirk and Brown's apartment. In his confession, Hood admitted that he wore a green jacket when he committed the murders. A green jacket was recovered during the execution of a search warrant at the Brockton residence where Hood was arrested on which preliminary testing indicated the presence of blood.[25] Further, in addition to the matching ballistics evidence, McLaughlin identified Hood in a photo array as the person who shot him.

The evidence about Kirk's knowledge of who shot Mulligan was contradictory. Although ADA O'Brien believed that Kirk had information about who had shot Mulligan, she was not aware of any admissible evidence that placed Kirk in the Walgreen's parking lot – as opposed to in the car with Ellis and Patterson – or any admissible evidence that Kirk saw who shot Mulligan. Rather, ADA O'Brien expected the evidence to show that Kirk was not in the Walgreens parking lot, but in the Volkswagen parked a short distance from parking lot and that, to reach the Walgreen's parking lot, she would have had to walk through a tree-filled area.

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that were later connected to Mulligan's murder; (ii) a report from Brazil that included a witness statement that a "Craig Patterson" was a possible suspect in the murder of Brown and Kirk; (iii) information that Brazil later learned the witness was referring to two people, Craig Hood and Terry Patterson; and (iv) information that Brazil had interviewed David Murray, Ellis, Kirk and Brown's uncle, who also referenced a "Craig Patterson" as having been involved in the murder of Brown and Kirk. For all of the reasons stated above, and based on the evidence submitted at the hearing, I find Weymouth received the discovery described in his affidavit.

[25] The Commonwealth was unable to conduct DNA testing.

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On the other hand, several witnesses testified at the grand jury or provided statements indicating that Kirk knew who had shot Mulligan. Coleman testified that Kirk said she was "up at Walgreens," and Prentiss Douglas claimed Kirk told him that she knew who shot Mulligan and she "was there." Ellis apparently told his uncle that Kirk was in the car with him and Patterson and was hysterical, and Patterson stated in his police interview that Kirk was with them in the car. Before trial, the Commonwealth filed a motion to exclude evidence relating to the Mulligan murder. That motion was not acted on prior to the plea.

The only direct evidence that would have linked Ellis to the murders of Kirk and Brown was the statement of Brown's traumatized two-year-old son. Weymouth had moved *in limine* to introduce the boy's statement as an excited utterance and that motion was not acted on at the time Hood pled guilty.

G. Plea Discussions and Negotiations

Around the time Weymouth received the discovery from the Mulligan Investigation, he and ADA O'Brien began discussing a possible plea.[26] Both continued to prepare for trial, and the docket reflects significant motion practice in anticipation of trial. At the end of those discussions, the Commonwealth was willing to accept a plea to second degree murder for both Kirk and Brown, with two consecutive life sentences with the possibility of parole after fifteen years – thus putting parole eligibility at thirty years.[27] Weymouth discussed the plea offer with Hood on more than one occasion and

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[26] The docket reflects lobby conferences on October 15, 1994 and November 1, 1994. I have no information about those conferences.

[27] Weymouth testified that ADA O'Brien approached him. ADA O'Brien testified that Weymouth approached her and "pressed" her repeatedly to accept a plea with a sentence of two life sentences with parole. I find that, given the evidence against his client, Weymouth believed such a plea was in the best interests of his client and I infer that Weymouth pressed the plea discussions as ADA O'Brien recalled. ADA O'Brien received clearance from her supervisor, and likely the District Attorney, to go forward

ultimately advised Hood to plead to second degree murder because it provided an opportunity for parole. Weymouth advised Hood to plead guilty after he had reviewed the discovery from the Mulligan Investigation.

In addition to the material Weymouth had been given by ADA O'Brien, Weymouth testified as to his distinct memory of specific information he was aware of prior to Hood's June 1995 plea. Weymouth was aware of Sanchez's identification of Ellis, the involvement of Detective Foley in the Mulligan Investigation, and the hotline tips the BPD received in connection with the Mulligan Investigation. Weymouth had received information from the Mulligan Investigation hotline that he would characterize as information about people other than Ellis with motive to kill Mulligan.[28] Prior to the plea, Weymouth also was aware that Ellis and a woman removed two firearms from the apartment where Kirk and Brown were killed and that one of the firearms was used to murder Mulligan. Weymouth was aware of certain allegations that, approximately two weeks before his murder, Mulligan had purportedly robbed a drug dealer, Robert Morton, of more than twenty-five thousand dollars, that an FBI informant provided information that Mulligan "shook down pimps for money," and that the son of a police officer had threatened to kill Mulligan. Further, Weymouth had all the grand jury testimony and police reports relating to the Mulligan Investigation and the transcript from the first Ellis trial.[29]

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with the plea due to the seriousness of the charges. Kirk's and Brown's family was not in favor of the plea because they viewed it as a thirty-year sentence, although ADA O'Brien believed Hood would serve far longer than thirty years.

[28] That evidence weakened, rather than strengthened, Weymouth's third-party culprit theory to the extent the theory was aimed at Ellis.

[29] In his Post Hearing Memo, Hood argues that Weymouth was not provided with certain police reports from the Mulligan Investigation concerning statements and interviews of Raven James and Evoney Chung – reports that were not addressed at the evidentiary hearing. I discuss those reports below.

If Weymouth had been aware of any additional internal or external reports of misconduct of Mulligan or any of the officers investigating the Ellis or Hood cases, he would have investigated, but he also would have ceased those efforts once discussions about a possible plea began. Information about Mulligan's possible corruption, however, was not what prompted Weymouth to believe there was a connection between the Mulligan and Kirk and Brown murders. Rather, from the time Mulligan was shot until Weymouth was appointed to represent Hood, Weymouth found it "too weird to be coincidental that Kirk was allegedly present at Walgreens when Mulligan was shot" and then "ended up dead."

Before advising his client regarding the plea deal, Weymouth understood that Hood had confessed to shooting McLaughlin as well as Kirk and Brown and that ballistic evidence tied the gun to both shootings.[30] To challenge that evidence, Weymouth moved twice for funds to retain a ballistician and moved to sever the charge related to the shooting of McLaughlin. Those motions were not acted upon prior to the plea. The Motion to Sever Weymouth filed shortly before trial disclosed his theories of defense as of June 14, 1995, which were that Hood's statements were not made freely and voluntarily but were a false confession made due to his psychological makeup and that Hood was not capable of forming the intent required for conviction of murder in the first degree due to psychological factors.

I find that, by the time Hood pled guilty, Weymouth's sole remaining defense was a combination of a third-party culprit defense coupled with the theory that Hood falsely confessed to shooting two people because the third-party culprit, i.e., Ellis, asked him to do so.[31] As noted above, Hood was unwilling to testify against Ellis, however,

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[30] No information or explanation was provided that would explain why Hood would have confessed to shooting McLaughlin.

[31] Weymouth could not recall receiving any information, from his client or elsewise, that would support an alibi defense. Weymouth arguably concluded that pressing the

and Weymouth, therefore, did not believe he would be able to present to or persuade a jury that Hood had falsely confessed.

H. Hood's Affidavits

Hood did not testify at the evidentiary hearing. He filed two affidavits, one dated March 30, 2020, filed with the Motion, and one filed in connection with his Second Suppl. Memo.

In his first affidavit, Hood averred that he pled guilty "upon the strong advice of counsel" and that Weymouth told him that he had "no chance at trial because [he] had confessed to the crime during a police interrogation." Hood indicated that he was aware that Weymouth had sought discovery from the Ellis and Patterson cases and that it was his understanding that Weymouth "did view all of the discovery in the Ellis/Patterson case" but was not able to discuss it with Hood and was not allowed to make Hood "privy to anything" Weymouth had learned. As a result, Hood never "considered anything that might have been in the Ellis/Patterson file before [he] tendered" his guilty pleas. Hood identified ten specific items of information, discussed *supra*, which I find the Commonwealth produced to Hood before his plea. Hood averred that, had he known of that information, he would "not have pled guilty to two counts of second-degree murder but instead, would have hired an investigator to do an additional investigation into the above and thereafter exercised my constitutional right to a trial." However, I find that Weymouth received and discussed the ten specific items of information with Hood prior to the plea as none was subject to the Court's order and it was Weymouth's practice to discuss discovery material with his client.

In 2022, Hood submitted a second affidavit. He recounted his arrest on October 1, 1993, the circumstances of his interview with the police and confession, and the

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defense of a false confession or lack of ability to form intent was not a sound, strategic choice given the opinion of the Commonwealth's expert.

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information he knew and did not know when he pled guilty. Hood averred that, had he known about the "misconduct of [] Mulligan, and the misconduct of detectives involved in the investigation" into the Kirk and Brown murders, "he never would have pled guilty to a double homicide." He averred that he decided to plead guilty after several conversations with Weymouth and having weighed the Commonwealth's evidence against his defenses. Hood said that Weymouth told him there was "little he could do" for Hood at trial because of the confession.

Finally, Hood averred that he had no idea that Weymouth was prevented from interviewing witnesses in the Ellis case or from seeing the evidence in that case until shortly before the plea and that, had he known, Hood would not "have rushed into a plea." Neither affidavit was entered into evidence and, as noted, Hood did not testify.

DISCUSSION[32]

Hood pled guilty to two counts of murder in addition to other charges. He did so after having confessed to the police that he murdered Celine Kirk and Tracy Brown. He twice unsuccessfully challenged his plea, arguing that he did not fully understand either the elements of the charges against him or the agreed-upon sentence and that his lawyer was ineffective. The SJC twice affirmed his conviction. Hood now seeks to vacate his plea for the third time arguing that allegedly undisclosed exculpatory evidence and new evidence uncovered in connection with Ellis II rendered his plea unknowing and that he received Constitutionally infirm assistance of counsel. In other words, Hood argues that, had he been made aware of the material, he would have taken his chances with a jury and would not have pled guilty. After hearing and review, based on the findings of fact detailed above, and for the reasons stated below, I

[32] Arguments raised in the parties' several briefs not addressed here were either inapposite or not persuasive.

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disagree that the plea should be vacated. I am not persuaded that justice may not have been done.

I. Motions To Vacate Pleas / For New Trial – General Legal Principles

"A motion to withdraw a guilty plea is treated as a motion for a new trial" pursuant to Mass. R. Crim. P. 30(b). Commonwealth v. Henry, 88 Mass. App. Ct. 446, 451 (2015), citing Commonwealth v. DeJesus, 468 Mass. 174, 178 (2014). A judge may, in the exercise of sound discretion, grant a new trial or vacate a plea if "it appears that justice may not have been done." Commonwealth v. Almonte, 84 Mass. App. Ct. 735, 738 (2014), quoting Commonwealth v. Berrios, 447 Mass. 701, 708 (2006), cert. denied, 550 U.S. 907 (2007). However, "[a] strong policy of finality limits the grant of new trial motions to exceptional situations, and such motions should not be allowed lightly." Commonwealth v. Ubeira-Gonzalez, 87 Mass. App. Ct. 37, 39-40 (2015) (citation and internal quotations omitted). Further, "[j]udges are to apply the standard set forth in rule 30(b) rigorously . . . ." Commonwealth v. Wheeler, 52 Mass. App. Ct. 631, 635 (2001).

A judge "should allow a post-sentence motion to withdraw a plea only 'if the defendant comes forward with a credible reason which outweighs the risk of prejudice to the Commonwealth.'" Commonwealth v. Desrosier, 56 Mass. App. Ct. 348, 353–354 (2002), quoting Commonwealth v. DeMarco, 387 Mass. 481, 484–487 (1982) (footnote omitted). The burden of establishing the grounds for a new trial / vacation of a plea always rests on the defendant. Commonwealth v. Marinho, 464 Mass. 115, 123 (2013); Commonwealth v. Hudson, 446 Mass. 709, 714-715 (2006); Commonwealth v. Liptak, 80 Mass. App. Ct. 76, 85 (2011).

"Due process requires that a plea of guilty be accepted only where 'the contemporaneous record contains an affirmative showing that the defendant's plea was intelligently and voluntarily made.'" Commonwealth v. Scott, 467 Mass. 336, 345 (2014), quoting Commonwealth v. Furr, 454 Mass. 101, 106 (2009). "A guilty plea is

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voluntary so long as it is tendered free from coercion, duress, or improper inducements." Id. (citations omitted). "Most cases in which a defendant seeks to vacate a guilty plea start with these principles and allege a facial defect in the plea procedure itself" but a guilty plea may also "be vacated as involuntary because of external circumstances or information that later comes to light." Id., citing Commonwealth v. Conaghan, 433 Mass. 105, 110 (2000) (new evidence raising question as to defendant's mental competence at time of guilty plea relevant to voluntariness of plea).

"In rebutting the presumption of plea regularity, 'the initial burden is on the moving defendant to present some articulable reason which the motion judge deems a credible indicator that the presumptively proper guilty plea proceedings were constitutionally defective, above and beyond a movant's "credulity straining" contentions.'" Commonwealth v. Hollingsworth, 68 Mass. App. Ct. 1109, *4 -*5 (2007) (Rule 1:28 opinion), quoting,Commonwealth v. Pingaro, 44 Mass. App. Ct. 41, 49–50 (1997), quoting in turn Commonwealth v. Duest, 30 Mass. App. Ct. 623, 627 (1991).

In this Motion, Hood does not argue that the plea proceedings were defective. Rather, he seeks to vacate his plea for four reasons: (i) the failure to disclose exculpatory material to him in violation of Brady v. Maryland, 373 U.S. 83 (1963); (ii) new evidence discovered in connection with Ellis II regarding a police corruption ring in which "Mulligan and other BPD homicide detectives participated"; (iii) deprivation of effective assistance because Weymouth advised him to plead guilty despite being prevented by the Court from discussing certain evidence with Hood; and (iv) his plea not being knowing or intelligent. I address each argument in turn.[33]

[33] Hood also argues that the confluence of factors of each of these alleged deficits entitles him to a new trial. See Commonwealth v. Rosario, 477 Mass. 69, 77-78 (2017); Commonwealth v. Brescia, 471 Mass. 381, 389-390 (2015). I am not persuaded.

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II. Motion to Vacate Plea Based on Undisclosed *Brady* Material

The SJC recently re-stated the standard for new trial motions based on alleged Brady violations:

> "Where the government fails to comply with this duty to turn over exculpatory evidence to the defense, a convicted defendant may be entitled to a new trial." Commonwealth v. Caldwell, 487 Mass. 370, 375, 167 N.E.3d 852 (2021). To obtain a new trial on the grounds that the Commonwealth failed to disclose certain exculpatory evidence, "a defendant must establish (1) that the evidence [at the time of trial] 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" (quotations and alterations omitted). Id., quoting Commonwealth v. Sullivan, 478 Mass. 369, 380, 85 N.E.3d 934 (2017). Of course, inherent in that analysis is the presupposition that the exculpatory evidence at issue was actually undisclosed and is newly discovered. See Commonwealth v. Caillot, 454 Mass. 245, 261-262, 909 N.E.2d 1 (2009), cert. denied, 559 U.S. 948, 130 S. Ct. 1527, 176 L. Ed. 2d 128 (2010) ("To establish a Brady violation, a defendant must show that ... the prosecutor failed to disclose the evidence"). Cf. [Commonwealth v.] Mazza, 484 Mass. [539,] 547 [(2020)], quoting Commonwealth v. Grace, 397 Mass. 303, 305, 491 N.E.2d 246 (1986) ("A defendant seeking a new trial on the ground of newly discovered evidence must establish ... that the evidence is newly discovered").

Commonwealth v. Pope, 489 Mass. 790, 798 (2022). Thus, the failure to disclose the evidence at issue is central and primary and must be proved. See Commonwealth v. Lykus, 451 Mass. 310, 326 (2008) (defendant seeking new trial on ground prosecution failed to provide specifically-requested exculpatory evidence has burden of showing evidence was not disclosed); Commonwealth v. Comita, 441 Mass. 86, 93-94 (2004) (defendant bears burden on motion for new trial).

Hood has not met his burden to show that the Commonwealth failed to disclose the exculpatory evidence discussed in section III(E) above. That failure dooms his Motion with respect to that material. To the contrary, I find the Commonwealth has established that all the material listed in items (a) to (k) [excluding (d), the Ellis II information] of Hood's Initial Memo and first Affidavit was provided to Weymouth.

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Hood appears to have conceded that point, as he does not press his argument regarding that material in his Post Hearing Memo. Instead, Hood argues first that he established the prosecutor's files were unorganized and the police files relating to the two investigations overlapped, which undercuts the Commonwealth's claim that all Brady material was produced. I disagree. Although there was clearly overlap between the two investigations and the police reports were occasionally mislabeled, I credit ADA O'Brien's testimony that she did not rely on the BPD's allegedly poor labeling system but, rather, personally read the files relating to the Mulligan Investigation and provided all material that overlapped with and/or was related to the Hood case to Weymouth in December 1994 and provided all the other material as detailed in Ex. 49 to Weymouth in April 1995. That some BPD material was disclosed late to ADA O'Brien does not alter my conclusion where I find that she gave all evidence she received to Weymouth relatively promptly upon receipt.[34] Further, Hood's argument flips the burden. Hood, not the Commonwealth, bears the burden of showing that exculpatory material was not provided to him.

Hood argues next that certain additional material – not disclosed or addressed in his Initial Memo, Suppl. Memo, or Second Suppl. Memo, but which he attached to his Post Hearing Memo – that would have been contained in the Mulligan Investigation files was not described in ADA O'Brien's March 21, 1995 discovery letter and thus not produced.[35] Hood argues the failure to disclose that material constitutes a Brady violation and establishes that ADA O'Brien did not copy and provide the entire Mulligan Investigation file as she testified. He also argues that he was not provided the

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[34] A single misplaced BPD Form 26 does not alter my conclusion.

[35] The material, Defendant's Record Appendix pages 557 – 591, was first provided to the Court with Hood's Post Hearing Memo and was not discussed, admitted into evidence, or disclosed at the evidentiary hearing. For that reason, I gave the Commonwealth an opportunity to file a short Reply brief addressing the documents.

hotline tips received relating to his case. I conclude that the material was either produced or was cumulative and thus any failure of production did not prejudice Hood.

Hood argues that the following was not produced to Weymouth:

FBI Reports re Confidential Informant. Hood alleges he was not provided two FBI reports from February 7 and 9, 1994 concerning information provided by a confidential informant (CI). The CI told the FBI that he/she spoke with Ellis, who was in jail, about bail and Ellis said that he was with the person who shot Mulligan and gave that person the gun that was used. Ellis also purportedly described the motive for the murder, namely, that Mulligan had been taking money from Ellis's cocaine distribution operation and the two disagreed about Mulligan's "cut."

Police Reports Regarding Raven James. Hood alleges that he was not provided two police reports – from October 18, 1993 and December 21, 1994 – detailing statements from interviews with Raven James (James). In the first report, James told police he was with Ellis and Patterson at Robert Matthews's house on September 27, 1993. When James asked Ellis who killed Mulligan, Ellis looked at James, smiled and then looked at Patterson. Both then looked at James, and neither said anything. James also told the police that, on September 24, 1993, after Ellis and James were chased by youth with guns, Ellis obtained a .25 caliber chrome gun with black grips. On December 21, 1994, James told the police that, weeks prior to Mulligan's murder, he was with Patterson and others when a .25 chrome-plated gun was passed around and that the gun was one of the weapons held by the Hansborough Street gang.

Evoney Chung. Hood argues that he was never provided the recorded interview and statement of Evoney Chung (Chung). Chung spoke to the police on October 8, 1993, and again on December 31, 1994. She provided the same substantive information in both. Chung told the police that she and a man went to the movies in Dedham on September 26, 1993. After the movie, they went to Walgreens on the way home,

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arriving between 3:35 and 3:40 a.m. When she walked toward the door, she saw Mulligan in his car reclined in the seat. He appeared to be sleeping. She was in the Walgreens for about ten minutes. When she left Walgreens, she saw Mulligan who still appeared to be sleeping in his police vehicle. She then saw two black kids coming toward her and then go around her. One went to the phone on the sidewalk and one to the pole at the rear of Mulligan's car. She said the one at the phone was taller than the other and was wearing a blue or gray hoodie and a jacket whereas the one at the pole was stocky and wore all black including a black knitted hat and black baggy pants. She estimated their ages between seventeen and twenty-one. Chung was unable to identify Ellis when shown a photograph.

Hood's Hotline Tips. Hood argues he did not receive four hotline tips related to the murders of Kirk and Brown. On September 29, 1993, an anonymous male caller called the BPD and disclosed that the two girls killed on River Street[36] were the "wrong two girls. They were supposed to go to 7-21, apartment 2 . . . that's who they suppose to kill." On October 1, 1993, the police received a call from Ada Jackson indicating that she may have information about Brown's murder. Jackson reported that she and her husband came home at 3:00 p.m. and she saw a person leave Brown's apartment at about 5:00 p.m. while her husband saw the young man come in somewhere between 4:00 and 5:00 p.m. Another undated phone tip recounted a conversation overheard on the Blue Line between what looked like two school kids, a tall thin black male with a boom box and a five foot seven, heavy-set, medium-skinned black female with good teeth. According to the tipster, the two discussed that the boyfriend of the older victim, but not the children's father, killed the two girls; the younger victim stabbed the boyfriend with a kitchen knife in the torso; and the child was put in the bed or bathroom during the killing. Finally, on October 14, 1993, police received a call from an

[36] The reference to River Street is unclear.

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unidentified woman about the gun that was under Hood's girlfriend's house claiming it was the gun that killed the two girls in Mattapan. The tipster said that Hood's girlfriend lived in Brockton and was named Nicole.

Even if Hood persuaded me that this relatively small amount of information was not provided to him, Hood has not established prejudice. None of the information significantly adds to the wealth of information already provided and known to Hood about the Mulligan murder and Ellis's involvement in the Mulligan murder, and none significantly increases the strength or viability of any Hood's defenses. Other than the hotline tips, the material inculpates Ellis as Mulligan's joint venture murderer but, before Hood's decision to plead guilty, Weymouth already had all the evidence he needed to argue Ellis murdered or participated in the murder of Mulligan and thus had a motive to kill Kirk. Weymouth had all the grand jury testimony and police reports relating to the Mulligan Investigation and the entire trial transcript from the first Ellis trial. Indeed, the allegedly undisclosed information duplicates much of what Weymouth already knew about information the police knew about Ellis's role in Mulligan's shooting. And, to the extent some of the information is exculpatory to Ellis, i.e., Chung's inability to identify him, it does not assist Hood or his defenses.

With respect to the hotline tips, much of it is also duplicative of material that I have found was provided to Weymouth. First, on May 4, 1995, ADA O'Brien provided the thirteen-page transcript of Ada Jackson's April 11, 1995 statement to the police in which she described leaving her apartment at around 5:00 p.m. and seeing a young man wearing a green coat, about five feet eight inches tall, coming out of Brown's apartment which was essentially the same information that was conveyed in the hotline tip. Second, the overheard conversation on the Blue Line was duplicative of information contained in the statement of James Matthews (Ex. 19) in which he recounted that, the day after the Kirk and Brown murders, Ellis said the boyfriend was fighting the girlfriend, the older sister jumped in and stabbed him, and he shot both girls. Thus,

Weymouth was already aware of information that a boyfriend was the shooter and had been stabbed – which, as noted, simply provided Weymouth with another alleged third-party culprit.

Hood was aware of the substance of the information that he now claims was not disclosed to him and is therefore not entitled to a new trial. See Commonwealth v. Tucceri, 412 Mass. 401, 414 (1992) ("If the undisclosed evidence is cumulative . . . the failure to disclose that evidence does not warrant the granting of a new trial."). See also Watkins, 473 Mass. 222, 231-232 (2015) ("weak and cumulative impeachment evidence" does not demonstrate "the existence of a substantial basis for claiming prejudice"); Caillot, 454 Mass. 261-262 ("To establish a Brady violation a defendant must show that . . . the prosecutor failed to disclose the evidence.").

III. Motion to Vacate Plea Based on Newly Discovered Evidence

Hood's second argument is that there is new evidence which calls into serious question his innocence. "A defendant seeking a new trial on the ground of newly discovered evidence must establish both that the evidence is newly discovered and that it casts real doubt on the justice of the conviction [or plea]." Grace, 397 Mass. at 305; Commonwealth v. LaFave, 430 Mass. 169, 176 (1999). Evidence is newly discovered if it was "unknown to the defendant or his counsel and not reasonably discoverable by them at the time of [the defendant's plea]." Grace, 397 Mass. at 306. A motion for a new trial should only be granted if the newly discovered evidence is of such importance that it presumably would have had a genuine effect on the proceedings. Commonwealth v. Markham, 10 Mass. App. Ct. 651, 654 (1980). "The evidence must be potent, pertinent, and creditworthy to fundamental issues in the case." Hollingsworth, 68 Mass. App. Ct. at *9, quoting Commonwealth v. Cintron, 435 Mass. 509, 517 (2001).

Here, the alleged new evidence is the same new evidence – about police corruption – which supported Ellis's successful motion for new trial. Hood argues that,

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if he had known about the corruption and misconduct of the BPD detectives involved in his case, he would never had pled guilty. The problem with that argument is four-fold.

First, Weymouth was aware of some allegations of police corruption, including specific evidence concerning corruption involving Mulligan, and he nonetheless advised Hood to plead guilty. For example, as found above, Weymouth was aware that, shortly before his murder, Mulligan had purportedly robbed a drug dealer, Robert Morton, of more than twenty-five thousand dollars, that an FBI informant provided information that Mulligan "shook down pimps for money," and that the son of a police officer had threatened to kill Mulligan. Despite that information, Weymouth advised Hood to plead guilty, arguably because it was not exculpatory as to Hood and did not provide a viable Bowden defense for *Hood*– unlike Ellis, as discussed *infra*.

Second, none of the new evidence – about the police corruption ring involving Mulligan and the detectives involved in the investigation of the Kirk and Brown murders – was connected to any specific aspect of the investigation into, or alleged failure to investigate, the Kirk and Brown murders. Police misconduct that is not connected to the investigation or prosecution of a specific defendant is an insufficient basis on which to vacate a plea or allow a motion for new trial. See Commonwealth v. Campiti, 41 Mass. App. Ct. 43, 62-66 (1996) (denial of motion for new trial based on evidence of unrelated police misconduct was not error). In his first Motion for New Trial, Ellis argued that "newly discovered evidence concern[ing] corrupt police practices on the part of Detectives Walter Robinson, Kenneth Acerra, and John Brazil" required a new trial because Robinson and Acerra were involved in obtaining the identification of Ellis from Rosa Sanchez. Ellis I, 432 Mass. at 764. The SJC affirmed the denial of Ellis's new trial motion because "[g]iven the absence of evidence, by affidavit or otherwise, suggesting that the subject detectives procured false evidence in connection with the investigation of *this defendant*, we cannot say that the witness was subjected to an unnecessarily suggestive confrontation." Id. at 765 (emphasis added),

citing Campiti, 41 Mass. App. Ct. at 62–66. See also Commonwealth v. Claudio, 484 Mass. 203, 206 (2020) ("Ordinarily, a defendant is entitled to withdraw a guilty plea by demonstrating that (1) egregious government misconduct took place *in connection with the defendant's case* and preceded the entry of the guilty plea; and (2) the misconduct was *material to the defendant's decision to plead guilty*." [emphasis added; citations omitted]).

The argument the SJC rejected in Ellis I is the same argument Hood makes here – that unrelated police misconduct compels a new trial. But Hood has offered no evidence that would connect the wrongdoing of Keeler, Acerra, Robinson, or Brazil, or any of the other BPD detectives who were involved in the investigation of both murders, to any specific impropriety or wrongdoing in connection with *his* case. The SJC has made clear that, when a defendant pleads guilty and learns later about police misconduct, the misconduct must be "the *source* of the defendant's misapprehension of some aspect of his case." Scott, 467 Mass at 347-348 (emphasis in original), citing Ferrara v. United States, 456 F.3d 278, 291 (1st Cir. 2006) ("It is only when the misapprehension results from some particularly pernicious form of impermissible conduct that due process concerns are implicated."). Thus, "[e]ven if a defendant's misapprehension of the strength of the government's case induces him to throw in the towel, that misapprehension, standing alone, cannot form the basis for a finding of involuntariness." Ferrara, 456 F.3d at 291.

Hood argues that his confession must be considered suspect because of the new evidence of the unrelated wrongdoing of Detectives Keeler and Brazil but points to nothing specific in the interview itself that would call into question his confession.[37] Further, this is Hood's fourth post-trial motion. If there had been any patent police

[37] By assessing carefully whether Hood is entitled to a new trial, and concluding he is not, I do not countenance any police misconduct. But the law requires, correctly, some connection between the specific conduct and the case at hand to vacate a knowing and voluntary decision to plead guilty.

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misconduct in connection with the interview and confession, Hood has waived that argument. See Mass. R. Crim. P. 30 (c)(2); Commonwealth v. Deeran, 397 Mass. 136, 139 (1986) ("Under this rule, a defendant must assert all reasonably available grounds for postconviction relief in his first rule 30 motion, or those claims are lost.").

In his 2001 motion to vacate his plea, Hood argued that his confession would have been suppressed because he suffered from PTSD. That motion was denied and affirmed on appeal. And, in 2015, the Appeals Court considered whether Hood received ineffective assistance of counsel when Weymouth advised him to plead guilty without having moved to suppress his confession and concluded he had not. Commonwealth v. Hood, 87 Mass. App. Ct. 1105, *3 (2015) ("[P]rior to his confession, the defendant himself initiated the interview with the officers and waived his Miranda rights. As such, the defendant's motion to suppress had very little, if any, likelihood of success on the merits and therefore this claim of ineffective assistance of counsel fails.")[38]

Massachusetts Rule of Criminal Procedure 30(c)(2) either means what it says or it is a meaningless nullity. A defendant is not entitled to bring Motions for New Trial seriatim, year after year, raising issues that could have and should have been raised previously or raising new, slightly different bases for the arguments already raised and rejected. Commonwealth v. Roberts, 472 Mass. 355, 359 (2015) ("Any grounds for relief not raised by the defendant in his original or amended motion for a new trial are 'waived unless the judge in the exercise of discretion permits them to be raised in a subsequent motion, or unless such grounds could not reasonably have been raised in the original or amended motion.'"); Commonwealth v. Watson, 409 Mass. 110, 112

[38] The Court noted that Hood had waived the argument but addressed it because it had been addressed by the Trial Court below. Id.

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(1991) (claims which could have been, but were not, raised in prior motion for new trial waived).

Third, Hood's reliance on the new evidence in Ellis II on which the SJC relied in granting Ellis a new trial ignores the distinct and essential differences between the investigation of the Kirk and Brown murders and the investigation of the Mulligan murder. The Ellis II Court rightly focused on the connection between the police investigators and the victim, which squarely put Mulligan in the center of an ongoing police corruption ring. That new evidence changed the Court's view of the significance of the alleged corruption in connection with the investigation of the Mulligan murder – which had not been successful in Ellis I. In other words, it was because the new evidence established that the *victim* was complicit in (arguably the ringleader of) police corruption with the very detectives investigating *his murder* that the SJC found the misconduct likely impacted the detectives' conduct investigating Mulligan's murder.

According to the SJC, because of the *victim's* "complicity," the investigating detectives "would likely fear that a prolonged and comprehensive investigation of the victim's murder would uncover leads that might reveal their own criminal corruption[.]" They thus had "a powerful incentive to prevent a prolonged or comprehensive investigation, and to discourage or thwart any investigation of leads that might reveal the victim's corrupt acts" giving rise to a powerful Bowden defense for Sean Ellis. Ellis II, 475 Mass. at 475-476.

Nothing about any of the alleged police misconduct uncovered and disclosed in Ellis II provides any similar motive here – namely, to short-circuit the investigation of the Kirk and Brown murders and pin the blame on Hood. Rather, given Hood's defense, the argument is misguided. *Ellis* was Hood's primary third-party culprit. *Ellis* was the person facing trial for Mulligan's murder. *Ellis* had access to Kirk and Brown – he lived with them. *Ellis* purportedly persuaded Hood to confess and take the blame for the Kirk and Brown murders which *Ellis* committed. In Hood's third-party culprit

theory, if anyone murdered the two girls to keep Kirk quiet about the Mulligan murder, it would have been Ellis (and / or Patterson but, as noted, Weymouth focused on Ellis because Ellis was the key to dealing with Hood's confession). But the Superior Court and the SJC in Ellis II were persuaded that the new evidence about *Mulligan's* participation in a police corruption scheme may have led the detectives investigating the *Mulligan* murder to prematurely and wrongly seek to pin the blame on Ellis. If so – if Ellis were not guilty of the Mulligan murder but was the patsy on which the murder was pinned to avoid an in-depth investigation into Mulligan's behavior and conduct – Ellis would have had no incentive to murder Kirk – the alleged witness. The Ellis II evidence thus does not aid Hood; it undercuts what was his primary defense.

Hood is not entitled to a new trial based on the evidence disclosed in Ellis II because it would not have had a genuine effect on his decision to plead guilty. See Commonwealth v. Henry, 488 Mass. 484, 490-491 (2021) (holding that, when newly discovered evidence involves police misconduct and the defendant pled guilty, the defendant must show that misconduct influenced the defendant's decision to plead guilty or was material to that choice). As discussed below in connection with the ineffective assistance of counsel argument, Hood's decision to plead guilty was eminently rational and he has not persuaded me otherwise – particularly without having testified. Given the facts stated above and as found after the evidentiary hearings, I do not credit Hood's averments in his affidavits that, had he known of the Ellis II evidence, he would have taken his chances at trial and foregone a plea deal which included the possibility of parole.[39]

[39] I also do not credit Hood's self-serving assertion that he would not have pled guilty had he known there was some material related to the Mulligan Investigation that his counsel was prohibited from sharing with him. See Commonwealth v. Torres, 469 Mass. 398, 403 (2014) ("A judge is not required to credit assertions in affidavits submitted in support of a motion for a new trial and may evaluate them in light of factors pertinent to credibility, including bias, self-interest, and delay.");

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IV. Motion to Vacate Plea Based on Ineffective Assistance of Counsel

"Where a motion for a new trial is based on ineffective assistance of counsel, the defendant must show that (1) the 'behavior of counsel [fell] measurably below that which might be expected from an ordinary fallible lawyer' and (2) such failing 'likely deprived the defendant of an otherwise available, substantial ground of defence.'" Commonwealth v. Tavares, 491 Mass. 362, 365 (2023) (alteration in original), quoting Commonwealth v. Saferian, 366 Mass. 89, 96 (1974). Determining whether counsel's conduct fell measurably below what might be expected from an ordinary fallible lawyer requires a "discerning examination and appraisal of the specific circumstances of the given case to see whether there has been serious incompetency, inefficiency, or inattention of counsel." Saferian, 366 Mass. at 96. "When the arguably reasoned tactical or strategic judgments of a lawyer are called into question, [courts] do not 'second guess competent lawyers working hard for defendants who turn on them.'" Commonwealth v. Rondeau, 378 Mass. 408, 413 (1979), quoting Commonwealth v. Stone, 366 Mass. 506, 517 (1974). Instead, we "require that such judgments be 'manifestly unreasonable[.]'" Id., quoting Commonwealth v. Adams, 374 Mass. 722, 728 (1978).

In the context of alleged ineffective assistance of counsel resulting in a guilty plea, the "defendant has the burden of establishing that . . . but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial" and that the "decision to reject the plea bargain would have been rational under the circumstances." Commonwealth v. Sylvain, 466 Mass. 422, 438 (2013) (quotations omitted).

Commonwealth v. Leng, 463 Mass. 779, 787 (2012) (judge is "not required to accept as true the assertions in the defendant's affidavit"); Commonwealth v. Lopez, 426 Mass. 657, 661 (1998) (judge not required to credit self-serving affidavit); Commonwealth v. Gilbert, 94 Mass. App. Ct. 168, 178 (2018) (judge not required to credit any claims in defendant's self-serving affidavit).

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Hood argues that Weymouth was ineffective in failing to challenge the protective order, seek a continuance, and / or ask that the protective order be lifted so he could advise Hood about the material subject to that order prior to the plea. I do not conclude that Weymouth's conduct fell below what would be expected from an ordinary fallible lawyer. Weymouth faced a unique situation in which his defense overlapped with another pending homicide case in Superior Court. He appropriately sought discovery from that separate and ostensibly unrelated case. The attorneys defending the Ellis case objected. They did so because of the extraordinary public and media attention that the Ellis case engendered, Weymouth's reported statements to the press, and their concern that their client receive a fair trial. Further, it was not ineffective for Weymouth to fail to object to Ellis's standing. E.g., Commonwealth v. Odgren, 455 Mass. 171, 176 (2009). Only Ellis had standing to protect from public disclosure information related to him. That there had already been one mistrial in the Ellis case does not obviate that interest where not all information concerning a defendant, i.e., not all discovery, is publicly disclosed during trial.

Further, Weymouth did not sit idly by. He did not ignore the connection between the two cases. He moved to compel and continued to press for the material. Weymouth ultimately received the discovery pursuant to the requirement that only he and co-counsel be permitted to review it. He reviewed the discovery prior to advising his client regarding the plea and complied with the order. It is not ineffective to comply with the court's order – indeed it is required by all practicing attorneys. While Weymouth could have done things differently – sought permission to disclose the information to Hood in advance of the plea, for example – the mere failure to make

different decisions is not ineffective assistance of counsel.[40] See Commonwealth v. Souza, 492 Mass. 615, 637 (2023) ("Only decisions that a lawyer of ordinary training and skill in criminal law would not consider competent are manifestly unreasonable.").

Hood also has not shown prejudice. He has not met his burden of establishing that, had he known about the information that Weymouth had reviewed but not disclosed to him, he would not have pled guilty. As I have found, Weymouth could not recall or identify any specific material from the Mulligan Investigation subject to the Court's order that he "should" have discussed with Hood prior to advising Hood to plead guilty. Nor has Hood pointed to any such evidence. Hood simply argues that, had he known there was a body of information not available to him for review, but which his counsel had reviewed, he would not have pled guilty. I am not persuaded. See footnote 39 *supra*. Speculation and hindsight are insufficient bases on which to vacate a plea. See Commonwealth v. Alebord, 467 Mass. 106, 114 (2014) (conduct of counsel "must be measured against that of an 'ordinary fallible lawyer' . . . at the time of the alleged professional negligence, and not with the advantage of hindsight"); Commonwealth v. Holliday, 450 Mass. 794, 807-808 (2008) ("A defendant must do more than raise a speculative theory . . . he must show that counsel's failure deprived him of a substantial ground of defense, and that better work would have accomplished something material.") (citations omitted).

Hood also has not established that it would have been rational to reject the plea offer. The Commonwealth had a very strong case with persuasive direct and indirect evidence of Hood's guilt. In the face of his detailed confession, the ballistic evidence matching the gun that shot McLaughlin to the gun that shot Kirk and Brown,

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[40] Hood argues that the Court should not have entered the protective order but should have simply entered a gag order. That error, if it was one, cannot be laid at Weymouth's feet.

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McLaughlin's identification of Hood as the person who shot him, and evidence that put Hood in the apartment with Kirk and Brown at the time of the murders, Hood's only defense was that Ellis shot Kirk and Brown to cover up his role in the Mulligan murder and Hood agreed to confess at Ellis's request due to psychological issues from his childhood trauma.[41] Weymouth reasonably and appropriately determined that, to present that defense, Hood would have to testify. There would be no other way to put the necessary facts before the jury for Hood to argue that defense.[42] Given the inability to present those facts and that defense, therefore, Weymouth's advice to Hood was reasonable. See Commonwealth v. Fratantonio, 495 Mass. 522, 531 (2025) (counsel not ineffective for failing to pursue an "extremely weak" defense). And, for all the same reasons, it would not have been rational for Hood to risk two life sentences without the

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[41] It is reasonable to conclude that, because of Ellis's substantial connecting links to the Kirk and Brown murders, the trial judge would have admitted evidence, including otherwise inadmissible hearsay, in support of the theory that Ellis committed the murders. Given the lack of such connecting links to the other potential third-party culprits – Dana Jones and Kurt Headon – however, and the risk of confusion, it is unlikely that Weymouth would have been able to admit into evidence hearsay regarding other potential third-party culprits. See Commonwealth v. O'Brien, 432 Mass. 578, 588 (2000).

[42] In addition, Hood's expert evidence to support his false confession theory was not strong, and even that evidence was countered by the Commonwealth's competing expert. And there was no guarantee Hood would be able to proceed with his expert in the face of the Commonwealth's motion *in limine*. See Commonwealth v. Conley, 103 Mass. App. Ct. 496, 503 (2023) (affirming exclusion of expert testimony on false confessions on how often "voluntary confessions to protect another occur . . . . or on what factors might make them more likely"). Hood's reliance on Commonwealth v. Scoggins, 439 Mass. 571, 576 (2003), is misplaced. That case concerned the recognition that suspects who are told by the police that the police had false evidence of guilt may "rationally conclude that he was about to be convicted wrongfully and give a false confession in an effort to salvage the situation." Id. Hood's defense was premised on a mental health issue leading to a false confession to protect or please another which requires competent admissible expert evidence.

possibility of parole when he was being offered a plea that would enable him to seek parole after thirty years.

Finally, as with several other arguments as discussed *infra*, Hood failed to raise this argument – ineffective assistance of counsel for the reasons argued in the instant motion – in any of his prior Motions for New Trial. The basis for this argument appears "indisputably on the trial record." See Commonwealth v. Zinser, 446 Mass. 807, 812 (2006). A cursory review of the docket sheet in this case would have shown Hood, or any of his post-conviction counsel, that the material relating to the Mulligan Investigation was produced to counsel pursuant to a Court order prohibiting disclosure to Hood. Thus, "[t]he evidence establishing the [supposed] constitutional violation was in the hands of the defendant . . . for decades." Commonwealth v. Francis, 485 Mass. 86, 110 (2020). Hood could have raised this argument in *any* of his prior motions but has never before claimed that the failure to provide that material to him constituted ineffective assistance of counsel or that he would not have pled guilty.

V. Voluntariness of Plea

Finally, Hood argues that his plea was not voluntary because he was not aware that there was material provided to Weymouth related to the Mulligan Investigation that Weymouth could not discuss with him. This argument also fails for the same reasons as the other arguments pressed in this Motion. First, it is not the case that a defendant must be aware of all extant evidence in a case in order for his decision to plead to pass Constitutional muster. Hood relies on the Appeals Court decision in Commonwealth v. Berrios, 64 Mass. App. Ct. 541, 551 (2005), to argue that his plea was not knowing because it was not made with an informed view of the evidence against him. There, the Appeals Court concluded that the defendant did not have an informed view of the evidence because his counsel had failed to properly investigate a change in a witness's testimony. But the SJC reversed Berrios where it concluded that the Appeals Court overstated the importance of the evidence. 447 Mass. 701, 712 (2006). As the SJC

reiterated, "[a] plea is valid only when the defendant offers it voluntarily, with *sufficient* awareness of the relevant circumstances, and with the advice of competent counsel." Id., 447 Mass. at 708 (Emphasis added, Citations omitted). Here, as discussed thoroughly, Weymouth was provided with all the Mulligan Investigation material and was able competently to advise Hood regarding the strength and weaknesses of the Commonwealth's case against him, albeit without disclosing certain limited specific information.

Second, Hood did not testify in connection with this motion and, as noted, I do not credit his affidavits. For the reasons discussed, and applying the rigorous standard applicable to motions to unwind pleas, I am unable to conclude that – had Hood been informed of any of the Mulligan Investigation material subject to the protective order – he would not have pled guilty. As I have found, Weymouth did not fail to review any material. Weymouth was fully cognizant of the overlap between the Ellis and Patterson cases and Hood's case, had worked diligently to obtain all relevant information, and had the material and evidence – inculpatory and exculpatory – on which he could provide informed advice to his client about a plea. He reviewed all the evidence provided to him including material from the Mulligan Investigation subject to the Court's order. I am not persuaded that Hood suffered any Constitutional harm or was prejudiced from Weymouth's compliance with the protective order such that his plea was not voluntary and knowing.[43] Put elsewise, Hood was well informed as to the strength of the Commonwealth's case.

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[43] "Due process requires that a plea of guilty be accepted only where 'the contemporaneous record contains an affirmative showing that the defendant's plea was intelligently and voluntarily made.'" Scott, 467 Mass. at 345, quoting Furr, 454 Mass. at 106, citing Boykin v. Alabama, 395 U.S. 238 (1969), and Commonwealth v. Foster, 368 Mass. 100, 102 (1975). "A guilty plea is intelligent if it is tendered with knowledge of the elements of the charges against the defendant and the procedural protections waived by entry of a guilty plea." Id., citing Duest, 30 Mass. App. Ct. at 630–631.

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Third, having now obtained fulsome post-conviction discovery, and after a four-day evidentiary hearing, Hood has identified no specific information which Weymouth was aware of but that he was not which would have caused him not to plead guilty.

Fourth, this is Hood's third new trial motion presented for judicial resolution and anyone viewing the docket sheet would have known that certain information from the Ellis Case was provided to Weymouth and not disclosed to Hood prior to Hood's decision to plead guilty. This argument is, therefore, waived pursuant to Mass. R. Crim. P. 30 (c)(2).

ORDER

For the foregoing reasons, the defendant's Third Motion to Vacate Guilty Pleas and For New Trial is **DENIED**.

/S/ Debra Squires-Lee
Debra A. Squires-Lee
Justice of the Superior Court

June 10, 2025

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THE TRIAL COURT OF THE
COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. **Superior Court Dept.**
Nos. SUCR93-11566

****
Commonwealth *
*
v. *
*
Craig Hood *
****

NOTICE OF APPEAL FROM DENIAL OF THIRD MOTION FOR NEW TRIAL

NOW COMES the defendant, through his attorney, and gives notice, pursuant to Rule 3 of the Massachusetts Rules of Appellate Procedure, of his intent to appeal certain rulings, opinions, directions, and judgments of the court in the above entitled matter, specifically the denial from his third motion for new trial.

Respectfully submitted,
Craig Hood,
By his attorney,

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Date: 6/11/25