

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, S.S.

SUPREME JUDICIAL
COURT No.

APPEALS COURT
No. 2025-P-0201

COMMONWEALTH OF MASSACHUSETTS

v.

DONALD WILLIAMS

**DEFENDANT'S APPLICATION FOR DIRECT APPELLATE REVIEW
OF THE ORDER OF THE SUFFOLK SUPERIOR COURT**

Merritt Schnipper
SCHNIPPER HENNESSY PC
25 Bank Row Suite 2S
Greenfield MA 01301
(413) 325-8541
mschnipper@schnipperhennessy.com
BBO# 676543

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, S.S.

SUPREME JUDICIAL
COURT No.

APPEALS COURT
No. 2025-P-0201

COMMONWEALTH OF MASSACHUSETTS

v.

DONALD WILLIAMS

APPLICATION FOR DIRECT APPELLATE REVIEW

Defendant Donald Williams applies pursuant to Mass. R. A. P. 11 for direct appellate review of the Suffolk Superior Court's denial of his Motion for New Trial in Docket 0884CR11227. Williams' appeal presents two significant and unresolved issues of Massachusetts law that should be addressed in the first instance by this Court.

First is the question of how courts should deal with claims of discrimination in jury selection in the form of '*Sanchez* errors' in cases tried after the issuance of *Commonwealth v. Sanchez*, 79 Mass. App. Ct. 189 (2011), which upheld a trial judge's refusal to inquire into the Commonwealth's rationale for a peremptory strike solely on the grounds that another member of the discrete group to which the challenged potential juror belonged had already been seated, and in which convictions became final before issuance of *Sanchez v. Roden*, 753 F.3d 279 (1st Cir. 2014), which held the Appeals Court's 'facile and misguided' analysis in that case was a violation of clearly established federal law and in short order upended

Massachusetts courts' treatment of the discriminatory use of peremptory challenges. At Defendant's trial, the Commonwealth used half its peremptory challenges against black women who could not be meaningfully distinguished from other jurors it had accepted without complaint. When Williams' counsel objected to one such strike and asked the trial judge to make the Commonwealth provide a non-discriminatory reason for it, the judge relied solely on the ground that another "African-American or person of color" had already been seated to allow the Commonwealth's strike and rejected defense counsel's argument "I don't think that the test is whether or not there are other black jurors that were seated. I think it's whether the Commonwealth's challenges in and of themselves are race-based"—exactly the rationale the First Circuit employed in condemning the Appeals Court's *Sanchez* decision. The judge who denied Defendant's Motion for New Trial held he had waived this preserved structural error by not raising it on direct appeal, and had nothing to say about how post-conviction courts should deal with preserved '*Sanchez* errors' in jury selection that arose between the time the Appeals Court's *Sanchez* decision was controlling Massachusetts law and the time it was effectively reversed, and held to violate the United States Constitution as explicated by the Supreme Court, by the federal courts.

The second issue presented involves 'ID check' courtroom security measures approved by this Court for the limited purpose of ensuring members of the public "lose their anonymity and therefore become more

accountable for their conduct in the court room, because if they then attempt to intimidate a witness or disrupt the proceedings, the court officer will know who they are,” *Commonwealth v. Maldonado*, 466 Mass. 742, 752 (2014), but which in this case were used by law enforcement to investigate potential attendees at Williams’s trial. In Defendant’s case Boston Police, not only court officers, sat outside the courtroom asking for the names and checking the identifications of members of the public who wished to attend trial, and did so by comparing each person to a set of photographs sourced primarily from the Boston Police’s ‘gang unit’ but which additionally included people such as Williams’ mother. Two members of Defendant’s family who had previously been harassed by Boston Police about their connections to *him*, despite their lack of any connection to his *case*, were dissuaded by these tactics from attending his trial. Both provided affidavits detailing these tactics, as did Williams’ trial counsel. Despite this showing, and notwithstanding this Court’s statement that ‘ID check’ courtroom security measures are permissible only where “there [is no] suggestion that the court officers investigated the criminal history of spectators or provided their names to law enforcement for investigation,” *Maldonado*, 466 Mass. at 751, the motion judge refused to hold an evidentiary hearing on Defendant’s Motion for New Trial, grant him any discovery into the security measures actually in effect at his trial, or analyze his claim under the constitutional standard of *Commonwealth v. Cohen*, 456 Mass. 94 (2010).

This Court has held that jury discrimination and courtroom closure issues of the sort presented by Defendant's case are structural because, despite the fact they are not susceptible to the traditional prejudice analysis, they call into question the very legitimacy of the process by which criminal convictions are obtained. Defendants whose trials were marred by the sort of discrimination in jury selection permitted by the Appeals Court's decision in *Sanchez*, or whose courtrooms were partially closed through law enforcement activity masquerading as neutral security measures, deserve hearings on the merits of their claims and decisions based on standards that must come in the first instance from this Court. Direct appellate review is necessary and appropriate to ensure they do.

As further support for his Application, Defendant relies upon the attached Memorandum of Law.

April 26, 2025

Respectfully Submitted,

DONALD WILLIAMS,
By His Attorney,

/s/ Merritt Schnipper
Merritt Schnipper
SCHNIPPER HENNESSY PC
25 Bank Row Suite 2S
Greenfield MA 01301
(413) 325-8541
mschnipper@schnipperhennessy.com
BBO# 676543

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, S.S.

SUPREME JUDICIAL
COURT No.

APPEALS COURT
No. 2025-P-0201

COMMONWEALTH OF MASSACHUSETTS

v.

DONALD WILLIAMS

**MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR DIRECT APPELLATE REVIEW**

I. **STATEMENT OF PRIOR PROCEEDINGS**

In December 2008, Donald Williams was indicted for assault and battery with a dangerous weapon causing serious bodily injury, G.L. c.265 §15A(c)(i); armed assault with intent to murder, G.L. c.265 §18(b); and various firearms charges related to the November 24, 2007 shooting of Tramane Smith in Boston. He was tried to a jury in Suffolk Superior Court April 11-22, 2011, convicted on all counts, and sentenced to consecutive terms of nineteen to twenty and eleven to fifteen years in state prison, with additional shorter terms run concurrently. The Appeals Court affirmed Defendant's convictions in an unpublished decision in February 2014, and this Court denied further review. See 2012-P-0307; FAR-22380.

Defendant filed his Motion for New Trial, which raised preserved claims of racial discrimination in jury selection pursuant to *Sanchez v. Roden*, 753 F.3d 279 (1st Cir. 2014), and related decisions of this Court and a

partial courtroom closure effected through improperly applied security measures imposed at the Commonwealth's request, in February 2023, and filed several supplements and motions for post-conviction discovery over the next eighteen months. The Superior Court (McCarthy-Neyman, J.) held a non-evidentiary hearing on April 5, 2024 and denied Defendant's Motion in a written Memorandum of Decision and Order on Defendant's Motion for New Trial ("Superior Court Order") on January 31, 2025. See Appx:25,34-59.¹ Defendant timely noticed his appeal of the Superior Court Order, and his case entered the Appeals Court on February 21, 2025.

II. FACTS RELEVANT TO THE APPEAL

1. Courtroom Security Measures and Jury Selection

A. Conditions on Courtroom Entry

The Commonwealth claimed that Williams and others implicated in his case had made calls in the months before trial attempting to dissuade the alleged victim from testifying, and had charged Defendant and others with witness intimidation based on them. Before jury selection began, the prosecutor requested that members of the public be required to show identification and 'sign in' before entering the courtroom:

given the issues that have arisen in this case with regard to witness intimidation, [the Commonwealth asked] that the Court order that an individual court officer be placed outside the door to check identifications and to sign people in as they come in for the trial. I think given the nature of the charges here, the

¹ Citations to the docket, Superior Court order, and other materials contained in the appendix to this Application are identified as Appx:Page(s).

various people that are on the Commonwealth's witness list, and again the witness intimidation that we've uncovered, I think that would be a safety precaution that I would like to ask for.

Trial 4/11:16.² Defense counsel objected, saying "the Supreme Judicial Court has made it clear that the courtroom is supposed to be open to the public," and she "d[id]n't think there's a need for anyone to be questioned prior to entering a public courtroom. I think it's intimidating, and I think it violates my client's right to a public trial." Trial 4/11:16-17. Counsel pointed out the Commonwealth 'had already locked up' Defendant's purported criminal associates, and argued no one "who wants to come should be precluded from coming because they don't have a picture ID or because they're intimidated by the fact that there is an officer sitting outside asking for identification."

Trial 4/11:17. The trial judge ruled

based on the history of this case, based on what I find to be egregious witness intimidation, I'm going to grant the Commonwealth's request. The defendant has made affirmative steps to reach out to people on the other side to intimidate witnesses, and I'm not going to have that in my courtroom.

Trial 4/11:17-18. Defense counsel reiterated her objection. Trial 4/11:18.

As put in effect, the 'ID check/sign-in' procedure used to screen potential trial attendees was far more intrusive—involving Boston Police officers, not just court officers, and using a set of photographs to identify specific persons for official attention—than that approved by the trial judge, and resulted in the exclusion of at least two people from the courtroom during

² Citations to the transcripts of Defendant's 2011 trial are identified as Trial Month/Day:Page(s).

Defendant's trial, both of who had already been subject to police harassment due to their familial connections to him. Despite the fact she was not alleged to have anything to do with Defendant's case, Williams' aunt Michelle Galloway was subject to multiple police contacts in connection with it. After driving Williams' mother Jeanette and cousin Okemia Credle to court so they could attend a preliminary hearing, Galloway was stopped by Boston Police, asked whether she knew 'who you had in your car'—Galloway told officers the passengers were her family—and "questioned...for fifteen or twenty minutes about what I knew about Jeanette and Donald and what Jeanette and I had talked about in the car." Appx:27. Officers later came to Galloway's home, questioned her further about Williams and his mother, and asked her to identify photographs of several family members and interpret transcripts of recorded phone calls between mother and son. Appx:27. Galloway found these unbidden interactions with police "unnerving and stressful." Appx:27. When Williams' trial began, Galloway attempted

to enter the courtroom, [and] saw police officers seated at a long black desk near the door. On the desk there was a book or album containing photographs of people as well as some papers with a list of names. Police at the desk asked me for my name, which I provided. Then they asked me to show photo identification. After my recent experiences dealing with police, and the stress they had caused, I was not inclined to share any information about myself with them. I therefore left the courthouse. A day or two after this experience, I returned to Suffolk Superior Court and again tried to attend Donald's trial. When I approached the courtroom I saw the same situation as before, with officers taking names and checking identifications of people coming into court. This time I did not even bother to try entering. I simply turned around and left the courthouse.

Appx:28.

Credle, Galloway's niece and Williams' cousin, was also dissuaded from attending trial based on her interactions with police. Credle's brother Tyrone was shot and killed in January 2008.³ The night of that crime, "a Boston Police detective showed up at the hospital to talk to my family. The officer did not seem interested in my brother's shooting, and was focused on questioning us about Donald." Appx:29. A few days later, police stopped Credle's car and "told me my cousin Donald 'is a really bad person' and that they wanted to question me. I then spent more than two hours in a cell at the police station on Dudley Street." Appx:29. After this Credle left Boston for Ohio, where she found work. Appx:29.

A few months into my new job, I got a call from human resources telling me to come to a meeting. When I entered the meeting room, I saw the same Boston detective who had questioned me and my family at the hospital after Tyrone was shot. The detective asked me 'why are you here?' I later learned the detective had also been to my house in Ohio. That evening I was fired from my job.

Appx:29. Credle returned to Boston for Williams' trial. But when she

tried to enter the courtroom at Suffolk Superior Court, a court officer and Boston police officer were sitting outside the courtroom. They asked me to sign in and to show identification. On the table in front of them was a book of photographs they were looking at. I refused to provide any identification and left the courthouse. The next day I went back to Suffolk Superior Court because I wanted to support Donald and my Aunt Jeanette. However, I saw the same thing as before, with the officers checking identification. I did not feel comfortable giving

³ See <https://bpdnews.com/blog/2008/01/21/2411>.

my personal information to police after having been harassed the way I had been, so I left.

Appx:30.

In the limited post-conviction discovery Williams received⁴ in connection with his Motion for New Trial, the Commonwealth produced from its files a sheet of photographs with a picture of Defendant in the top left and a total of twenty-two persons (including his mother) pictured, providing corroboration for Galloway and Credle's description of the as-applied conditions on courtroom entry during trial. See Appx:33. Williams's trial counsel affirmed she had not received this sheet in discovery, but based on long experience recognized most of the photographs on it as having been sourced from the Boston Regional Intelligence Center ("BRIC"), commonly known as the 'gang unit.' Appx:31-32. Counsel also recalled a table set up outside the courtroom with two chairs in apparent connection with the conditions on courtroom entry imposed at the Commonwealth's request, further corroborating Galloway and Credle's descriptions. Appx:31-32.

B. Jury Selection

With twelve of sixteen jurors selected, defense counsel objected to the Commonwealth's strike of potential juror no. 196, Tiesha Sheffield ("Juror 196"), its fourth peremptory challenge, pointing out "this is the second black female the Commonwealth has challenged. I think a [*Commonwealth v.*]

⁴ Williams received only discovery agreed to by the Commonwealth; the motion judge denied all his requests for post-conviction discovery.

Soares[,377 Mass. 461 (1979),] challenge at this point.” Trial 4/11:137-41; see also Trial 4/11:65-70,106-07,119-22. Counsel and the trial judge then engaged in the following exchange:

COURT: I don’t find any pattern that would raise a concern. There have been other African-Americans or people of color selected to be on the jury.

COUNSEL: Judge, just for the record, I don’t think that the test is whether or not there are other black jurors that were seated. I think it’s whether the Commonwealth’s challenges in and of themselves are race-based.

COURT: I’m aware of the legal standard...and I know that one person can be a pattern, but I don’t detect any pattern whatsoever. The last juror that was chosen was a black female. I don’t find there to be any pattern.

COUNSEL: Just note my objection.

Trial 4/11:140-42. The trial judge declined to seek a non-discriminatory reason for the challenge from the Commonwealth, and Juror 196 was excused from service. Trial 4/11:141-42.

At the time of the challenged peremptory strike, twelve jurors had been seated, one of whom was a black woman, and the Commonwealth had struck four potential jurors, two (i.e., fifty percent) of whom were black women, notwithstanding the fact that the juror most recently seated (Juror 191, Joanne Rene) was a black woman. Trial 4/11:36-142. While Juror 196 had been a crime victim and also had a family member who had been in trouble with the law, Juror 191 was also a crime victim but was not the subject of a Commonwealth strike. Trial 4/11:131-34. Neither was Juror 145,

Melissa Keefe, a white woman who the Commonwealth accepted without objection despite the fact her grandfather was “a corrupt cop” and her father “had drug issues,” even as it struck Juror 138, Annie Powell, another black woman whose son had previously been a criminal defendant. Trial 4/11:65-70, 76-79, 121-22.

At the time of Williams’ trial, Massachusetts appellate courts’ most recent precedential statement on discriminatory use of peremptory challenges in jury selection was the Appeals Court’s decision in *Commonwealth v. Sanchez*, 79 Mass. App. Ct. 189, 191-192 (2011), which upheld the seating of other members of a targeted group, without more, as justification for a trial judge’s refusal to require the prosecution to state a non-discriminatory reason for its strike. Three weeks after Defendant’s convictions became final with this Court’s denial of further appellate review, the First Circuit in *Sanchez v. Roden* held this analysis was “facile and misguided” and objectively unreasonable in light of binding Supreme Court precedent in effect at the time of Sanchez’s 2006 trial. See 753 F.3d 279, 299-300 (1st Cir. 2014)).

2. Trial Evidence, Verdict, and Appeal

Trial evidence showed that Tramane Smith was shot multiple times in the early morning hours of November 24, 2007 on Torrey Street in Dorchester, leaving him seriously injured. Trial 4/12:54-55,107. According to Smith, he had known Defendant for approximately ten years and was part of

a gang of which Williams was purportedly the leader. Trial 4/12:107-111. Smith testified that Defendant shot him at the end of a night during which Smith had announced to Williams and a number of other gang members his intent to renounce gang membership and criminal activity more generally. Trial 4/12:138-189. Smith identified Defendant as his assailant from a photo array three weeks after the shooting. Trial 4/13:26-31. Smith's former girlfriend, her sister, and a police witness also testified to Smith's identification of Williams as his shooter and/or statements to that effect. Trial 4/14:17-71,132-133,183-189.

Four people Smith claimed witnessed his shooting and events surrounding it, and whose testimony the defense contended would undercut or otherwise challenge his version of events, were summonsed to trial by the Commonwealth but invoked their rights against self-incrimination and were excused from testifying. Trial: 4/14:3-4,211-214; Trial 4/19:92-94,101-102.

The jury deliberated for approximately ten hours before finding Williams guilty on all charges. Trial 4/20:108-13; Trial 4/21:2-5. The Court sentenced him to an aggregate term of between thirty and thirty-five years. Trial 4/22:2-3,17-20. The sole issue raised by appellate counsel was that the trial court had improperly denied a renewed motion to dismiss for violation of the time limitations set forth in Mass. R. Crim. P. 36 filed after the verdict, which the Appeals Court rejected in an unpublished decision.

3. Motion for New Trial

In his Motion for New Trial, Williams pointed the Court to two preserved structural errors at his 2011 trial, one involving the partial courtroom closure created when police used a facially neutral courtroom security protocol for an impermissible law enforcement purposes and the other involving the trial judge's refusal to require justification from the Commonwealth of its second peremptory challenge of a black female potential juror on the grounds another black woman had already been seated despite trial counsel's statement, vindicated by both federal and Massachusetts courts shortly thereafter, that the composition of the seated jury on its own was not a permissible basis on which to refuse inquiry.⁵

With regard to the partial courtroom closure, Williams argued that this Court's holding "that requiring spectators to produce identification in order to enter a court room does not constitute a court room closure in the constitutional sense, and does not violate the right to a public trial," *Commonwealth v. Andrade*, 488 Mass. 522, 543-44 (2021), and review of the imposition of such conditions under a deferential abuse of discretion standard rather than the stringent constitutional standard applicable to courtroom closures, depended on the fact court officers assigned to check identification at the courtroom door "did not conduct any screening of spectators except to

⁵ The Motion for New Trial also raised an issue of newly available evidence from witnesses excused from trial based on their privilege against self-incrimination but who subsequently came forward and proffered affidavits contradicting Smith's testimony to events surrounding his shooting.

see if they were on the witness list [so as to enforce a sequestration order],” and “there [was no] suggestion that the court officers investigated the criminal history of spectators or provided their names to law enforcement for investigation.” *Commonwealth v. Maldonado*, 466 Mass. 742, 751 (2014). Police’s aggressive pretrial interactions with two of Williams’ family members not implicated in his case and use of gang-database information to screen potential trial attendees made his case more like *United States v. Deluca*, in which a procedure that had U.S. Marshals investigating the criminal background and connections to the defendants of persons entering the courtroom was analyzed as a partial courtroom closure. See 137 F.3d 24, 28-30, 32-35 (1st Cir. 1998). Given its obvious law-enforcement driven purpose, Defendant argued, the as-applied conditions on courtroom entry in his case could not satisfy the stringent requirements of *Commonwealth v. Cohen*, 456 Mass. 94, 107-11 (2010), and thus constituted an unconstitutional closure.

With regard to the trial judge’s exclusive reliance on the fact a member of the challenged group had already been seated to deny defense counsel’s request that the Commonwealth be required to justify its peremptory strike of a black female potential juror, Defendant argued that *Sanchez v. Roden*, 753 F.3d 279 (1st Cir. 2014), issued a mere three weeks after his conviction became final and effectively overruling *Commonwealth v. Sanchez*, 79 Mass.App.Ct. 189 (2011), which was controlling law at the time of his trial, vindicated his trial counsel’s objection to the trial judge’s analysis of the issue

and enunciation of the correct ‘totality of the circumstances’ standard. Because the First Circuit’s decision in *Sanchez v. Roden* was grounded in controlling federal law that was clearly established at the time of his trial, and in light of Massachusetts law providing that in cases of preserved structural error reversal is automatic without any showing of prejudice, see, e.g., *Commonwealth v. Sanchez*, 485 Mass. 491, 498 (2020), Williams argued “counsel’s failure to argue this issue on appeal necessarily amounted to ineffective assistance of counsel.” *Commonwealth v. Cardenuto*, 406 Mass. 450, 454 (1990).

The Superior Court rejected these claims and denied Defendant any post-conviction discovery targeted at them. Appx:25. It found both were waived by Williams’ failure to raised them on direct appeal, and that he could not avoid the waiver of his jury discrimination claim by resort to ineffective assistance of counsel principles. Appx:41-43. With regard to the conditions on entry/courtroom closure issue, the motion judge held that the fact as-applied conditions on entry turned back people who wished to attend did not amount to a closure. Appx:43-48. She did not mention, let alone address or analyze, Galloway and Credle’s interactions with Boston police in the time leading up to trial or the significance of police officers’ participation in screening trial attendees, and found the two women’s affidavits about encountering officers using a list of names and pictures to screen entrants, even when considered together with the list of gang unit photographs produced by the

Commonwealth, did not amount to “evidence[] that the officers were using the photographs or a list of names to check the identification of individuals before they entered the courtroom.” Appx:47.

With regard to Williams’ preserved claim of discrimination in jury selection, the motion judge found he had waived this claim by not raising it on direct appeal and could not revive it through a claim of ineffective assistance of appellate counsel. Appx:48-55. She further held Williams had not established the trial judge erred by refusing to require the Commonwealth to state a non-discriminatory reason for its strike of Juror 196, notwithstanding the undisputed fact the trial judge’s exclusive reliance on the fact another black woman had been seated precisely mirrored the “facile and misguided” analysis rejected as a violation of federal law in *Sanchez v. Roden*. Appx:48-55. Because this ruling by the trial judge was not error, the motion judge concluded, Defendant did not receive ineffective assistance of counsel on appeal. Appx:48-55.

III. ISSUES OF LAW RAISED BY THE APPEAL

1. May a criminal defendant who preserved his objection to the jury discrimination analysis permitted by the Appeals Court's decision in *Commonwealth v. Sanchez*, and whose conviction became final before *Sanchez v. Roden* abrogated that approach to such issues, access the standard of review applicable to preserved structural errors under Massachusetts law on collateral review?

2. Does police officer participation in an 'ID check' courtroom security procedure allowed by a trial judge to be conducted by court officers for the limited purpose of preventing witness intimidation in the courtroom, and use of that procedure for investigative law enforcement purposes, require that the procedure as effected be analyzed under the constitutional standard applicable to partial courtroom closures, rather than the deferential abuse of discretion standard applicable to neutral courtroom security measures?

These issues are preserved for the Court's review, as both the discrimination in jury selection and courtroom closure issues were directly presented to the Superior Court and formed the core of Defendant's claims for relief.

IV. ARGUMENT

1. Defendants Who Preserved ‘Sanchez Errors’ in Jury Selection at Trials Conducted After Issuance of the Appeals Courts’ Decision in *Commonwealth v. Sanchez* and Whose Convictions Became Final Before Issuance of *Sanchez v. Roden* Are Entitled to Review of Such Claims for Structural Error

When Williams’ trial judge refused to make the prosecutor justify her second peremptory challenge of a black female juror based on his observation “[t]here have been other African-Americans or people of color selected to be on the jury,” defense counsel objected that whether other non-whites had been selected for service was ‘not the test,’ and reiterated the requirement to focus on “whether the Commonwealth’s challenges in and of themselves are race-based,” but to no avail. Three weeks after Defendant’s conviction became final with this Court’s denial of further appellate review, the First Circuit vindicated his trial counsel’s recitation of the standard to be applied at the first stage of the *Batson/Soares* inquiry when it found the Appeals Court’s published decision in *Commonwealth v. Sanchez*, 79 Mass. App. Ct. 189 (2011)—decided ten days before Williams’ trial, and the most recent precedential Massachusetts opinion on the question at that time—had “unreasonably applied” clearly established federal law when it “dismissed the racial challenge out-of-hand by its facile and misguided resort to the undisputed fact that the prosecutor had allowed some African Americans to be seated on the jury.” *Sanchez v. Roden*, 753 F.3d 279, 299-300 (1st Cir. 2014). In the wake of *Sanchez v. Roden*, Massachusetts appellate courts

began regularly finding structural error, and reversing convictions, where a trial judge relied on the presence of one or more targeted group members on a seated jury as a reason not to require the Commonwealth to explain a peremptory challenge—i.e., committed ‘*Sanchez* error’ in assessing a *Batson/Soares* challenge. See, e.g., *Commonwealth v. Ortega*, 480 Mass. 603, 607-08 (2018); *Commonwealth v. Robertson*, 480 Mass. 383, 396-97 (2018); *Commonwealth v. Jones*, 477 Mass. 307, 325-26 (2017); see also *Commonwealth v. Sanchez*, 485 Mass. 491, 500 (2020) (noting this Court’s “frequent, extensive, and approving reliance on [*Sanchez v. Roden*] in explaining the standard for evaluating the first phase of a *Batson-Soares* inquiry”).

In these circumstances—where a defendant preserves a trial objection under the correct legal standard, but is overruled by a trial judge applying the incorrect standard as subsequently recognized by decisions of this Court—basic principles of justice require that such a defendant be able to access the standard of review applicable to preserved structural errors on collateral review, i.e., reversal on a finding of error without any requirement to show prejudice. See *Commonwealth v. Robinson*, 480 Mass. 146, 150-51 (2018). This Court has recognized, including in its treatment of the *Sanchez* case and the impact of the First Circuit’s decision in it, “that, where this court, in a separate and later case, has indicated or implied that a specific appellate decision was wrongly decided, there might be grounds for a motion

for a new trial under Mass. R. Crim. P. 30(b) for the particular individual whose appellate case had been cast into doubt.” *Sanchez*, 485 Mass. at 499 (discussing *Sanchez v. Roden* as functionally holding the Appeals Court’s *Sanchez* decision was “wrongly decided”) (citing *Commonwealth v. Rodriguez*, 443 Mass. 707, 710-711 (2005)).

Here, while no court has held that *Williams*’ direct appeal was wrongly decided, and the issue is not (as it was in this Court’s 2020 *Sanchez* decision) whether he is estopped from litigating his claim of ‘*Sanchez* error’ but rather whether that claim is waived for purposes of collateral review, the principle this Court applied in *Sanchez* applies with equal force to his case. Given that Defendant objected at trial to the Commonwealth’s peremptory challenge under the correct standard and asserted that the judge was applying an incorrect one by relying solely on the composition of the seated jury, and given that the Appeals Court’s *Sanchez* decision was controlling Massachusetts law at the time of both Williams’s trial and appeal but has since been overruled, Defendant should be entitled to the benefit of having preserved this issue for review. As this Court observed in upholding the *Sanchez* motion judge’s decision to grant a new trial, the “principles [articulated in *Sanchez v. Roden*] had always been the law during the pendency of this case, including the trial in 2006. Thus, under clear, preexisting law, the defendant should have prevailed on his initial appeal.” *Sanchez*, 485 Mass. at 497 (quoting motion judge’s ruling).

Defendant was tried in 2011, not 2006, and at the time of his trial federal law was, if anything, even clearer on the question of how judges should deal with the preliminary stage of jury discrimination inquiries. See *Sanchez v. Roden*, 753 F.3d at 299 (citing and quoting *Snyder v. Louisiana*, 552 U.S. 472, 478 (2008), for constitutional requirement to consider “all of the circumstances that bear upon the issue of racial animosity” in dealing with challenges to peremptory strikes). Yet, unlike the *Sanchez* defendant, Williams was tried and had his direct appeal heard in a three-year window during which controlling Massachusetts precedent expressly permitted the erroneous treatment to which his jury discrimination claim was subjected. Whether viewed through the lens of ineffective assistance of appellate counsel due to his lawyer’s failure to argue the preserved jury discrimination claim in light of clearly established federal law, as Williams argued the case below, see *Commonwealth v. Hardy*, 464 Mass. 660, 669 (2013) (appellate counsel provides ineffective assistance by failing to brief issue that would have led to reversal of conviction), or as an instance of the “clairvoyance exception to [the] waiver doctrine” that permits a defendant to raise an issue on collateral review when the applicable constitutional doctrine “was not sufficiently developed at the time the defendant should have raised it...on appeal,” *Commonwealth v. Francis*, 485 Mass. 86, 112 (2020), basic fairness requires that his claim be heard *now* under the standard of review applicable to preserved structural errors. Direct review by this court is necessary and

appropriate to ensure that Williams and all similarly situated defendants receive such consideration.

2. The Use of Police Officers to Enforce Ostensibly Neutral Courtroom Security Measures for Law Enforcement Purposes Takes them Out of the Realm of Discretionary Conditions on Courtroom Entry and Requires Their Analysis as a Partial Courtroom Closure

As demonstrated by the experiences of Williams' family members, individuals not suspected of any connection to criminal activity were nevertheless subject to smothering attention from Boston Police ahead of his trial through interrogatory traffic stops, unannounced visits to residences and jobs, and temporary detentions. Nor did these official acts—which their subjects experienced as harassment—stop at the courthouse door. Acting under cover of a judicial order permitting *court officers* to check identifications of persons entering Defendant's trial courtroom, *Boston Police officers* manned a checkpoint outside the courtroom and compared attendees to a set of names and photographs drawn primarily from their 'gang unit.' While this law enforcement-driven application of a facially neutral courtroom security measure presents a factual scenario of first impression under Massachusetts law, this Court's limited precedents on when and subject to what limitations trial attendees may be required to show identification before entering a courtroom demonstrate that such official behavior must be analyzed under the stringent standards applicable to partial courtroom closures. The Superior Court erred when it declined to do so, and refused

even to grant Williams discovery into the extent of law enforcement participation in screening persons seeking to attend his trial.

In *Commonwealth v. Maldonado*, decided three years after Defendant's trial, this Court for the first time held "a judge [may] order[] spectators first to sign in and provide some form of identification before they [a]re permitted to enter a court room" as a matter of discretion, subject to findings "that justify imposing this condition on entry based on the special circumstances of the case and only where the conditions are no broader than needed to accomplish their purpose" of "diminish[ing] the risk of witness intimidation and disruption of the court room." 466 Mass. 742, 749-752 (2014). Because "[a]ny condition placed on entry into a court room, even these modest conditions of identification, that may prevent some members of the public from attending a trial and that may discourage others from attending implicates constitutional concerns about the right to a public trial," the *Maldonado* court was clear about why it approved the 'show ID' condition imposed in that case: the judge "did not require that the court officer outside the court room door conduct any screening of spectators...[n]or [wa]s there any suggestion that the court officers investigated the criminal history of spectators or provided their names to law enforcement for investigation." *Id.* at 748, 751. The Court contrasted these neutral, limited conditions on entry with procedures involving "a court officer who was posted outside the court room who asked all spectators except attorneys and family members their

identity and their interest in coming to court,” which “raised the same secrecy and fairness concerns that a total closure does” and therefore required analysis under constitutional standards. *Id.* at 750 (quoting *People v. Jones*, 96 N.Y.2d 213, 216, 219 (2001)).

Materials filed with Williams’ Motion for New Trial show that in his case, Boston Police were directly involved in screening potential courtroom entrants and did so through the use of information sourced from law enforcement databases, supporting the inference police “investigated the criminal history of spectators” who might attend Defendant’s trial and were using the facially permissible conditions on entry imposed by the trial judge at the Commonwealth’s request to gather more information on Williams’ purported associates. *Id.* at 750. Notably, the *Maldonado* court contrasted the limited, non-intrusive security measures imposed at that trial with those used at the trial of *United States v. Deluca*, in which “each spectator before entering the court room was required to present written identification to a deputy United States marshal, who recorded the spectator’s name, address, and birth date, and used that information to determine whether the spectator had a criminal background or any connection with a defendant” and which, like the more intrusive and intimidating conditions on entry at issue in *Jones*, required analysis under constitutional standards. *Id.* at 750 (citing 137 F.3d 24, 32-35 (1st Cir. 1998)).

The motion judge denied Defendant access to discovery regarding police interactions with his family members ahead of trial, identification of the police officers who worked the checkpoint outside his courtroom, or the nature of the investigation that produced the list of names and photographs used to screen trial attendees. Nevertheless, the materials submitted with Williams’ Motion for New Trial by themselves establish beyond serious question that the actual, as-applied conditions on entry to his trial courtroom far exceeded the neutral procedure this Court has approved for the limited purpose of stripping attendees of their anonymity and deterring intimidating or disruptive conduct, *Maldonado*, 466 Mass. at 752; see also *Commonwealth v. Andrade*, 488 Mass. 522, 541-542 (2021), and instead functioned, at least in part, as a law enforcement mechanism targeted at specifically identified individuals based on their “connection with [the] defendant.” *Maldonado*, 466 Mass. at 750 (citing *Deluca*, 137 F.3d at 35).

Because of the motion judge’s clearly erroneous finding there was no “evidence[] that the officers were using the photographs or a list of names to check the identification of individuals before they entered the courtroom,” Appx:47, she never considered whether the actual conditions on entry to Williams’ trial courtroom satisfied the constitutional requirements of *Commonwealth v. Cohen*—a standard that applies even where, as here, the official actions that resulted in a partial courtroom closure were not ordered by the trial judge him- or herself. See 456 Mass. 94, 107-115 (2010). Review

by this Court is necessary to resolve that question and provide guidance to future courts and litigants on when facially permissible conditions on courtroom entry intrude on the public trial right as applied and therefore require constitutional justification.

V. REASONS DIRECT REVIEW IS APPROPRIATE

Defendant's appeal raises two novel questions, one of which asks how post-conviction courts should deal with preserved claims of discrimination in jury selection arising during the three-year window when Massachusetts precedent on such issues was in conflict with clearly established and controlling federal law, and the other of which asks what standards apply to claims for relief based on facially neutral conditions on courtroom entry that are transformed, as put into effect by those enforcing them, into law enforcement activity that acts as a barrier to entry in violation of the constitutional public trial right. The first of these issues calls into question a discrete set of convictions obtained during the time Massachusetts law on the discriminatory use of peremptory challenges was misaligned with Supreme Court precedent, while the second requires consideration of the manner in which increasingly common conditions on courtroom entry are actually enforced and how courts should address cases in which such conditions, as applied, interfere with criminal defendants' constitutional right to be trial in public proceedings. Because both questions presented implicate the structural fairness of Massachusetts criminal trials and are likely to arise in other cases, they are appropriate for resolution by this Court.

April 26, 2025

Respectfully Submitted,

DONALD WILLIAMS,
By His Attorney,

/s/ Merritt Schnipper
Merritt Schnipper
SCHNIPPER HENNESSY PC
25 Bank Row Suite 2S
Greenfield MA 01301
(413) 325-8541
mschnipper@schnipperhennessy.com
BBO# 676543

CERTIFICATE OF COMPLIANCE

I certify that the foregoing document complies with the Rules of Appellate Procedure applicable to formatting of briefs, including the relevant provisions of Rules 16 and 20. Compliance with the length limitation governing Applications for Direct Appellate Review is demonstrated by the fact this Application is printed in Century Schoolbook, a proportional font, and its argument section contains no more than 2,000 words.

/s/ Merritt Schnipper

CERTIFICATE OF SERVICE

I certify that on April 26, 2025 I electronically filed this Application for Direct Appellate Review through the Court's e-filing system, which will deliver an electronic copy of the same to ADA Paul Linn, counsel for the Commonwealth.

/s/ Merritt Schnipper

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, S.S.

SUPREME JUDICIAL
COURT No.

APPEALS COURT
No. 2025-P-0201

COMMONWEALTH OF MASSACHUSETTS

v.

DONALD WILLIAMS

APPENDIX TO APPLICATION FOR DIRECT APPELLATE REVIEW

Docket 0884CR11227	1
Affidavit of Michelle Galloway	26
Affidavit of Okemia Credle	28
Affidavit of Rosemary Scapicchio, Esq.	30
Sheet of Names and Photographs from Commonwealth's Trial File	32
Memorandum of Decision and Order on Defendant's Motion for New Trial	33

0884CR11227 Commonwealth vs. Williams, Donald R

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 12/18/2008
- DCM Track:
- B - Complex
- Initiating Action:
- A&B WITH DANGEROUS WEAPON, SERIOUS BODILY INJURY c265 §15A (c) (i)
- Status Date:
- 12/18/2008
- Case Judge:
- Krupp, Hon. Peter B
- Next Event:
-

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

Party Information

Commonwealth
- Prosecutor

[Alias](#)

Party Attorney

- Attorney
- Brandt, Esq., Nicholas
- Bar Code
- 670808
- Address
- Administrative Office of the District Court
24 New Chardon St
Boston, MA 02114
- Phone Number
- (617)788-8810
- Attorney
- Lewis, Esq., Sarah Montgomery
- Bar Code
- 683156
- Address
- Suffolk County District Attorney's Office
One Bulfinch Place
Boston, MA 02114
- Phone Number

- (617)619-4088
- Attorney
- Linn, Esq., Paul B
- Bar Code
- 559194
- Address
- Suffolk County District Attys Office
- One Bulfinch Place
- Boston, MA 02114
- Phone Number
- (617)619-4083
- Attorney
- McGowan, Esq., David D
- Bar Code
- 670041
- Address
- Suffolk County District Attorney's Office
- One Bulfinch Place
- Boston, MA 02114
- Phone Number
- (617)619-4000
- Attorney
- Zanini, Esq., John P
- Bar Code
- 563839
- Address
- Office of the District Attorney Plymouth County
- 166 Main St
- Brockton, MA 02301
- Phone Number
- (508)894-2688

[More Party Information](#)

Williams, Donald R
- Defendant

Alias

Party Attorney

- Attorney
- Davenport, Esq., Paul J
- Bar Code
- 639821
- Address
- Paul Davenport and Associates, LLC
- One Washington Mall
- Boston, MA 02108
- Phone Number
- (617)529-7042
- Attorney
- DeJuneas, Esq., Patricia A
- Bar Code
- 652997
- Address
- DeJuneas Law, LLC

- 83 Atlantic Ave
Boston, MA 02110
- Phone Number
- (617)529-8300
- Attorney
- Schnipper, Esq., Merritt Spencer
- Bar Code
- 676543
- Address
- Schnipper Hennessy PC
- 25 Bank Row
Suite 2S
Greenfield, MA 01301
- Phone Number
- (413)325-8541
- Attorney
- Sibbison, Esq., Wendy H
- Bar Code
- 461080
- Address
- Sibbison and DeJuneas
- 26 Beech St
Greenfield, MA 01301
- Phone Number
- (413)774-3410
- Attorney
- Travayiakis, Esq., Eleftherios Konstantinos
- Bar Code
- 655143
- Address
- Law Offices of Lefteris K. Travayiakis, P.C.
- 1842 Centre St
Suite 200
West Roxbury, MA 02132
- Phone Number
- (617)325-9500

[More Party Information](#)

Party Charge Information

- **Williams, Donald R**
- - Defendant

Charge # 1:**265/15A/D-1 - Felony** A&B WITH DANGEROUS WEAPON, SERIOUS BODILY INJURY c265 §15A (c) (i)

- Original Charge
 - 265/15A/D-1 A&B WITH DANGEROUS WEAPON, SERIOUS BODILY INJURY c265 §15A (c) (i) (Felony)
 - Indicted Charge
 - Amended Charge

Charge Disposition

Disposition Date
Disposition
04/21/2011
Guilty Verdict

- **Williams, Donald R**

- - Defendant

Charge # 2:**265/18/C-0 - Felony** ASSAULT TO MURDER, ARMED c265 §18(b)

- Original Charge

- 265/18/C-0 ASSAULT TO MURDER, ARMED c265 §18(b) (Felony)

- Indicted Charge

- Amended Charge

Charge Disposition

Disposition Date

Disposition

04/21/2011

Guilty Verdict

- **Williams, Donald R**

- - Defendant

Charge # 3:**269/10/G-2 - Misdemeanor - more than 100 days incarceration** FIREARM WITHOUT FID CARD, POSSESS c269 s.10(h)

- Original Charge

- 269/10/G-2 FIREARM WITHOUT FID CARD, POSSESS c269 s.10(h)
(Misdemeanor - more than 100 days incarceration)

- Indicted Charge

- Amended Charge

Charge Disposition

Disposition Date

Disposition

04/21/2011

Guilty Verdict

- **Williams, Donald R**

- - Defendant

Charge # 4:**269/10/K-0 - Felony** FIREARM, CARRY WITHOUT LICENSE, 2ND OFF c269 §10(a) & (d)

- Original Charge

- 269/10/K-0 FIREARM, CARRY WITHOUT LICENSE, 2ND OFF c269 §10(a) &
(d) (Felony)

- Indicted Charge

- Amended Charge

Charge Disposition

Disposition Date

Disposition

04/21/2011

Guilty Verdict

- **Williams, Donald R**

- - Defendant

Charge # 5:**269/10/J-1 - Felony** FIREARM, CARRY WITHOUT LICENSE c269 §10(a)

- Original Charge

- 269/10/J-1 FIREARM, CARRY WITHOUT LICENSE c269 §10(a) (Felony)

- Indicted Charge

- Amended Charge

Charge Disposition

Disposition Date

Disposition

04/21/2011

Guilty Verdict

Events

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
01/05/2009 09:30 AM	Magistrate's Session		Arraignment		Held as Scheduled
03/16/2009 09:30 AM	Magistrate's Session		Pre-Trial Conference		Rescheduled
04/07/2009 09:30 AM	Magistrate's Session		Pre-Trial Conference		Held as Scheduled
05/04/2009 09:30 AM	Criminal 1		Pre-Trial Hearing		Held as Scheduled
08/03/2009 09:00 AM	Criminal 3		Final Pre-Trial Conference		Rescheduled
08/24/2009 09:00 AM	Criminal 3		Jury Trial		Rescheduled
06/01/2010 02:00 PM	Criminal 6		Status Review		Rescheduled
06/03/2010 02:00 PM	Criminal 6		Status Review		Held as Scheduled
06/15/2010 09:00 AM	Criminal 6		Status Review		Held as Scheduled
06/21/2010 09:00 AM	Criminal 6		Status Review		Held as Scheduled
07/22/2010 02:00 PM	Criminal 6		Trial Assignment Conference		Held as Scheduled
09/17/2010 09:00 AM	Criminal 6		Hearing		Held as Scheduled
10/04/2010 09:00 AM	Criminal 6		Final Pre-Trial Conference		Not Held
10/04/2010 02:00 PM	Criminal 6		Final Pre-Trial Conference		Held as Scheduled
10/13/2010 09:00 AM	Criminal 6		Jury Trial		Not Held
11/18/2010 02:00 PM	Criminal 6		Hearing		Held as Scheduled
02/01/2011 02:00 PM	Criminal 6		Status Review		Held as Scheduled
02/02/2011 09:00 AM	Criminal 6		Status Review		Rescheduled
03/22/2011 11:00 AM	Criminal 6		Final Pre-Trial Conference		Held as Scheduled
04/01/2011 09:00 AM	Criminal 6		Hearing on Motion(s) in Limine		Held as Scheduled
04/05/2011 09:00 AM	Criminal 6		Jury Trial		Rescheduled
04/06/2011 09:00 AM	Criminal 6		Hearing		Held as Scheduled
04/08/2011 09:00 AM	Criminal 6		Hearing on Motion(s) in Limine		Held as Scheduled
04/11/2011 09:00 AM	Criminal 6		Jury Trial		Held as Scheduled
04/12/2011 09:00 AM	Criminal 6		Jury Trial		
04/13/2011 09:00 AM	Criminal 6		Jury Trial		
04/14/2011 09:00 AM	Criminal 6		Jury Trial		
04/15/2011 09:00 AM	Criminal 6		Jury Trial		
04/19/2011 09:00 AM	Criminal 6		Jury Trial		
04/20/2011 09:00 AM	Criminal 6		Jury Trial		
04/21/2011 09:00 AM	Criminal 6		Jury Trial		Held as Scheduled
04/22/2011 09:00 AM	Criminal 6		Hearing for Sentence Imposition		Held as Scheduled

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
02/23/2017 11:00 AM	Criminal 6	BOS-9th FL, CR 906 (SC)	Motion Hearing	Roach, Christine M	Held as Scheduled
06/22/2017 09:30 AM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Sanders, Hon. Janet L	Rescheduled
07/27/2017 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Hearing for Appearance / Appointment of Counsel	Roach, Christine M	Not Held
08/03/2017 09:30 AM	Criminal 6	BOS-9th FL, CR 906 (SC)	Hearing for Appearance / Appointment of Counsel	Roach, Christine M	Not Held
08/17/2017 10:00 AM	Criminal 5	BOS-8th FL, CR 817 (SC)	Hearing for Appearance / Appointment of Counsel	Krupp, Hon. Peter B	Held as Scheduled
01/26/2018 09:30 AM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Roach, Christine M	Held as Scheduled
02/23/2024 02:00 PM	Criminal 9	BOS-7th FL, CR 713 (SC)	Motion Hearing	Rooney, Hon. Lynn C	Canceled
04/05/2024 02:00 PM	Criminal 9	BOS-7th FL, CR 713 (SC)	Motion Hearing	McCarthy-Neyman, Hon. Kathleen	Held as Scheduled

Ticklers

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Pre-Trial Hearing	01/05/2009	01/05/2009	0	03/14/2014
Final Pre-Trial Conference	01/05/2009	08/03/2009	210	03/14/2014
Case Disposition	01/05/2009	10/02/2009	270	03/14/2014

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/18/2008	Indictment returned	1	
12/18/2008	MOTION by Commonwealth for arrest warrant to issue; filed & allowed Ball, J.	2	Image
12/18/2008	Warrant on indictment issued		
12/18/2008	Warrant was entered onto the Warrant Management System 12/18/2008		
01/05/2009	Defendant brought into court on true warrant printout. Warrant Recalled.		
01/05/2009	Appearance of Deft's Atty: Rosemary Curran Scapicchio	3	
01/05/2009	Deft arraigned before Court		
01/05/2009	Deft waives reading of indictment		
01/05/2009	RE Offense 1:Plea of not guilty		
01/05/2009	RE Offense 2:Plea of not guilty		

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
01/05/2009	RE Offense 3:Plea of not guilty		
01/05/2009	RE Offense 4:Plea of not guilty		
01/05/2009	RE Offense 5:Plea of not guilty		
01/05/2009	Bail set: \$10,000,000.00 Surety or \$1,000,000.00 Cash w/o/p. Bail warning read. Mittimus issued.		
01/05/2009	Assigned to Track "B" see scheduling order		
01/05/2009	Tracking deadlines Active since return date		
01/05/2009	Case Tracking scheduling order (Gary D Wilson, Magistrate) mailed 1/5/2009		
01/05/2009	Case Tracking scheduling order (Gary D Wilson, Magistrate) mailed 1/5/2009		
01/05/2009	Continued to 3/16/2009 for hearing on PTC		
01/05/2009	Continued to 5/4/2009 for hearing on PTH		
01/05/2009	Continued to 8/3/2009 for hearing on FPTH		
01/05/2009	Continued to 8/24/2009 for hearing on PTD (Gary D Wilson, Magistrate) - G. Lundgren, ADA - C. Sproul, Court Reporter - R. Scappichio, Attorney		
01/05/2009	Warrant canceled on the Warrant Management System 1/5/2009		
02/20/2009	Commonwealth files First notice of discovery (pending indictment)	4	
02/20/2009	Commonwealth files Second notice of discovery	5	
03/16/2009	Defendant not present, continued until 4/7/2009 by agreement re: pre trial conference. Wong, MAG - G. Lundgren, ADA - ERD		
04/07/2009	Defendant brought into court		
04/07/2009	Pre-trial conference report filed	6	
04/07/2009	Case remains on track, next date 05/04/2009 for hearing re: pre trial. (Jail List) Wilson, MAG - G. Lundgren, ADA - ERD - R. Scapicchio, Attorney		
05/04/2009	Defendant not in court.		
05/04/2009	Deft files Motion for Discovery and Production of Discoverable Information I.	7	
05/04/2009	Deft files Motion for Discovery and Production of Discoverable Information II.	8	
05/04/2009	Deft files Supplemental Motion for Discovery and Production of Discoverable Information	9	
05/04/2009	See tracking order dates. Ball. J - ERD - R. Scapicchio, Attorney		

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
07/21/2009	Brought into court.		
07/21/2009	Commonwealth's Assented-to Motion to Continue filed and after hearing allowed by agreement. (Presumptive trial date set for 11/30/09 in 907) Dates set on 1/5/09 cancelled. Vaughan, MAG - G. Lundgren, ADA - R. Scapicchio, Atty - JAVS.	9.1	
09/16/2009	Commonwealth files Notice of discovery III	10	
06/03/2010	Defendant not in court. Status conference held before Gaziano, RAJ. Case is tracking 07-11314.		
06/03/2010	Continued to 6/15/10 by agreement for status. Gaziano, RAJ - G. Lundgren, ADA - M. Brooks, ADA - R. Scappicchio, Atty - P. Connolly, CR.		
06/15/2010	Brought into court. Trial in SUCR 2007-11314 continued for one day at the request of the Commonwealth. Matter continues to track 2007 case. Gaziano, RAJ - G. Lundgren, ADA - R. Scapicchio, Atty - N. Fowlkes, CR.		
06/21/2010	Brought into court. Hearing on Motion to Dismiss on 2007-11314 case held before Gaziano, RAJ. Matter is taken under advisement.		
06/21/2010	Continued to 7/22/10 at 2:00 p.m. for trial assignment. Gaziano, RAJ - G. Lundgren, ADA - M. Brooks, ADA - R. Scappicchio, Atty - P. Connelly, CR.		
07/22/2010	Defendant not present - trial assignment conference held before Lauriat, J.		
07/22/2010	Case held in Session- Ready for trial		
07/22/2010	Continued to 10/13/2010 at ther reques to the Commonwealth for trial. Case to follow 2007 matter. Rule 36 not waived. (Jail List) Lauriat, J - M. Brooks, ADA - C. LaVallee, Court Reporter - R. Scarpicchio, Attorney		
09/07/2010	Commonwealth's Fourth Notice of Discovery filed	12	
09/08/2010	Commonwealth's Motion for a Protective Order and Motion to File Supporting Affidavit and Memorandum Under Seal. Memorandum placed under SEAL. (impounded 9/17/10 Lauriat, J (mkr)	11	
09/08/2010	Brought into court.		
09/08/2010	Hearing on Protective Order held before Lauriat, J. No action taken pending in camera hearing.		
09/08/2010	Continued to 10/4/10 by agreement for FPTC. Lauriat, J. - G. Lundgren, ADA - R. Scapicchio, Atty - D. Cercone, CR.		
09/10/2010	Commonwealth's Fifth Notice of Discovery filed.	13	
09/17/2010	Commonwealth files: Commonwealth's Notice of Intent to Introduce Medical Records	14	

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
09/17/2010	Commonwealth files: Motion for Court Order for Medical Records filed along with Affidavit in support thereof.	15	
09/17/2010	Defendant not in court.		
09/17/2010	In camera, ex-parte hearing held before Lauriat, J. re: Commonwealth's Motion for a Protective Order. After hearing, the Court finds that the Commonwealth has presented a specific, substantial basis for this motion, and it therefore allowed. Protective Order to issue. Lauriat, J. Copy of endorsement sent to attorney.		
09/17/2010	Order filed by the Court, Lauriat, J. Copy sent to parties.	16	
09/17/2010	The Court orders transcript of hearing IMPOUNDED and shall not be produced unless by order of court. G. Lundgren, ADA - M. Brooks, ADA - D. Cercone, CR.		
10/04/2010	Defendant brought into court for FPTH		
10/04/2010	Filed: Joint Pre-Trial Memorandum	17	
10/04/2010	Commonwealth files witness list	18	
10/04/2010	FPTH held. Gaziano,J; G.Lundgren,ADA; M.Brooks,ADA; R.Scappichio,Atty; R.LeRoux,Court reporter		
10/08/2010	Commonwealth files: Motion for a Continuance	19	
10/12/2010	Brought into court.		
10/12/2010	Hearing on Paper #19 held before Gaziano, RAJ. After hearing, motion allowed. Court orders time to be excluded from Rule 36 calculations over the defendant's objection. Parties to report new trial date. (Parties report new trial date of 4/5/11).		
10/12/2010	Continued to 2/11/10 at 9:00 a.m. for Status at the request of the Commonwealth. (Rule 36 excluded). Gaziano, RAJ - G. Lundgren, ADA - R. Scapicchio, Atty - N. King, CR.		
12/16/2010	Defendant's Renewed Objection to Pretrial Delay and Request to Correct the Docket to Notice Defendant's Objections filed.	20	
01/04/2011	The Court, Gaziano, RAJ. allows Paper #20. The Court amends the docket to reflect the Court's decision to exclude the time from Rule 36 was over the defendant's objection. The defendant clearly objected to the continuance. Gaziano, RAJ. (Notice sent).		
02/01/2011	Brought into court. Status conference held before Gaziano, RAJ.		
02/01/2011	Commonwealth files: Eighth Notice of Discovery filed.	21	
02/01/2011	Continued to 3/22/11 at 9:00 a.m. for FPTC by agreement. Motions to be filed by 2/24/11. Gaziano, RAJ. - G. Lundgren, ADA - M. Brooks, ADA - R. Scapicchio, Atty - N. King, CR.		

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
02/24/2011	Commonwealth files: Motion to File Exhibits Under Seal - Allowed. Gaziano, RAJ.	22	
02/24/2011	Commonwealth files: Motion in Limine to Admit Certain Evidence of Defendant's "Prior Bad Acts: and Gang Affiliation	23	
02/24/2011	Commonwealth files: Motion in Limine to Admit Statements	24	
02/24/2011	Commonwealth files: Motion in Limine to Rely on Prior Convictions	25	
02/24/2011	Commonwealth files: Motion for Judicial Inquiry into Criminal History Records of Potential Trial Jurors	26	
03/22/2011	Brought into court. Status conference held before Gaziano, RAJ.		
03/22/2011	Commonwealth files: Ninth Notice of Discovery	27	
03/22/2011	Commonwealth files: Notice of In Camera Disclosure of Certain Information Relating to a Grand Jury Investigation	28	
03/22/2011	Commonwealth files: Commonwealth's Motion to File Under Seal the In Camera Disclosure of Certain Information Relating to a Grand Jury Investigation - Allowed. Gaziano, RAJ.	29	
03/22/2011	Commonwealth's In Camera Disclosure filed UNDER SEAL	30	
03/22/2011	Continued to 4/1/11 at 9:00 a.m. by agreement for Hearing on Motions in Limine. Gaziano, RAJ. - G. Lundgren, ADA - R. Scapicchio, Atty - N. King, CR.		
03/23/2011	The Court, Gaziano, RAJ allows Paper #28. The Commonwealth does not have an obligation to disclose evidence in the present case. Gaziano, RAJ. (Notice sent).		
03/23/2011	The Court, Gaziano, RAJ. allows Paper #29. Gaziano, RAJ. (notice sent).		
03/24/2011	Commonwealth files: Notice of In Camera Supplemental Disclosure of Certain Information Relating to a Grand Jury Investigation	31	
03/24/2011	Commonwealth files: Commonwealth's Motion to File Under Seal the In Camera Disclosure of Certain Information Relating to a Grand Jury Investigation - Allowed. Gaziano, RAJ.	32	
03/24/2011	Commonwealth's In Camera Supplemental Disclosure of Certain Information Relating to a Grand Jury Investigation filed UNDER SEAL	33	
03/28/2011	Commonwealth files: Tenth Notice of Discovery	34	
03/28/2011	Commonwealth files: Certificate of Compliance for March 25, 2011	35	
03/28/2011	Commonwealth files: Motion for Discovery	36	
03/28/2011	Commonwealth files: Notice of Ex Parte Motion Filing	37	
03/28/2011	Commonwealth files: Motion to File Ex-Parte Motion Under Seal	38	

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
03/28/2011	Commonwealth files: Motion for a Protective Order	39	
03/29/2011	Other records from Sprint received		
03/29/2011	Defendant's Motion for Criminal Records filed and allowed. Gaziano, RAJ.	40	
03/29/2011	Commonwealth files: Eleventh Notice of Discovery	41	
03/30/2011	Commonwealth files: Notice of Materials Provided to Defense Counsel.	41.1	
04/01/2011	Defendant brought into court		
04/01/2011	Deft files motion to dismiss (Speedy Trial)	42	
04/01/2011	Deft files motion in limine to prevent the Commonwealth from accessing CORI juror records of prospective jurors	43	
04/01/2011	Deft files motion to sequester witnesses	44	
04/01/2011	After hearing re motions ,continued to 4/5/11 for trial. Gaziano,RAJ; G.Lundgren,ADA; M.Brooks,ADA; R.Scapichio,Atty; N.King,C.R.		
04/01/2011	Defendant files: Opposition to the Commonwealth's Motion for a Protective Order	45	
04/01/2011	Defendant files: Motion in Limine: Prior Bad Acts and Uncharged Conduct	46	
04/01/2011	Defendant files: Motion for Individual Voir Dire Conducted by Counsel	47	
04/01/2011	Defendant files: Opposition to Commonwealth's Motion in Limine to Admit Out of Court Hearsay Statements	48	
04/01/2011	Defendant files: Opposition to Commonwealth's Motion in Limine to Admit Evidence of Prior Convictions	49	
04/04/2011	Commonwealth files: Twelfth Notice of Discovery	50	
04/04/2011	Commonwealth files: Commonwealth's Notice of In Camera April 4, 2011 Disclosure of Certain Information Relating to a Grand Jury Investigation	51	
04/04/2011	Commonwealth files: Motion to File Under Seal the In Camera April 4, 2011 Disclosure of Certain Information Relating to a Grand Jury Investigation	52	
04/04/2011	Commonwealth files: In Camera April 4, 2011 Supplemental Disclosure of Certain Information Relating to a Grand Jury Investigation	53	
04/05/2011	Defendant not in court.		
04/05/2011	The Court, Gaziano, RAJ. orders trial continued to 4/11/11. The Session is unavailable due to trial in progress. Comm. v. Fritz Olmande, SUCR 09-11087.		

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
04/05/2011	At the request of the Commonwealth, the Court recognizes witnesses Stacey Morris and Stephanie Morris and orders them to appear on April 11, 2011 at 9:00 a.m. Gaziano, RAJ - G. Lundgren, ADA - X - N. King, CR.		
04/06/2011	Defendant not in court.		
04/06/2011	At the request of the Commonwealth, the Court recognizes witness Deangelo Taldon and orders him to appear on April 11, 2011 at 9:00 a.m. Gaziano, RAJ - G. Lundgren, ADA - X - N. King, CR.		
04/08/2011	Brought into court.		
04/08/2011	Hearing on Motions in Limine held before Gaziano, RAJ.		
04/08/2011	Commonwealth files: Motion to Introduce Statements of the Defendant	54	
04/08/2011	Hearing on Paper #54. After hearing, motion allowed over defendant's objection.		
04/08/2011	Commonwealth files: Motion to Preclude Evidence of Third-Party Culprit	55	
04/08/2011	Hearing on Paper #55. After hearing, motion is allowed. The defendant shall proffer this evidence at side bar prior to pursuing this line of questioning. The defendant has a right to argue a Bowden defense.		
04/08/2011	Commonwealth files: Thirteenth Notice of Discovery	56	
04/08/2011	Joint Pre-Trial Memorandum filed.	57	
04/08/2011	Hearing on Paper #39. The Court orders that the defendant has an obligation to comply with Rule 36.		
04/08/2011	Defendant files: Opposition to Commonwealth's Motion to Prevent the Defense from Referencing Third Party Culprits	58	
04/08/2011	Defendant files: Opposition to Commonwealth's Motion for Reciprocal Discovery	59	
04/08/2011	Defendant files: Motion to Preclude the Commonwealth from Referencing any of the Defendant's other Cases During His Trial	60	
04/08/2011	Hearing on Paper #60. After hearing, motion allowed.		
04/08/2011	Defendant files: Motion to Exclude Statements and References to His Incarceration as well as Videotaped Evidence Displaying Defendant in Jail	61	
04/08/2011	Hearing on Paper #61. After hearing, motion denied.		
04/08/2011	After hearing, the Court endorses Paper #53. Parties given copy of endorsement. Paper #53 remains under seal. Gaziano, RAJ.		
04/08/2011	Defendant files: Motion for Suggested Questions to the Jury Asked on an Individual Basis	62	

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
04/08/2011	Defendant files: Motion Re: Cross-Examination of Tramaine Smith Regarding His Bias and Motive to Lie	63	
04/08/2011	Commonwealth files: Motion in Limine Regarding Victim's Cooperation	64	
04/08/2011	Hearing on Paper #64. After hearing, matter is taken under advisement.		
04/08/2011	Voir Dire of Sgt. Det. Joseph MacDonald held.		
04/08/2011	Case held for trial on 4/11/11 by agreement. Gaziano, RAJ - G. Lundgren, ADA - M. Brooks, ADA - R. Scapicchio, Atty - N. King, CR.		
04/11/2011	Brought into court.		
04/11/2011	Commonwealth files: Witness List	65	
04/11/2011	Commonwealth files: Motion to Preclude the Defendant from Introducing Certain Hearsay Statements	66	
04/11/2011	Commonwealth files: Motion to Preclude the Defendant from Introducing Evidence of Impeachment of Specific Acts of Misconduct not Resulting in a Conviction	67	
04/11/2011	The Court, Gaziano, RAJ. denies Paper #64 with respect to the witness's cooperation in the Odem investigation. Based on my review of the recording, I find that the witness may have a motive to curie favor with the government.		
04/11/2011	The Court endorses Paper #63 as follows: "See the Court's ruling on the Commonwealth's Motion to Limit Cross-Examination (Paper #63). The Court has not issued any rulings that need to be reconsidered, prohibiting cross-examination on motive to lie."		
04/11/2011	Hearing re: witnesses. At the request of the Commonwealth, Capias issued for witnesses Memogne Lamothe and Tramaine Smith.		
04/11/2011	Memogne Lamothe appears with his attorney Chris Belozos and is ordered to appear on April 14, 2011 at 9:00 a.m.		
04/11/2011	Case called for trial. Parties answer ready. Commonwealth moves for trial on all offenses.		
04/11/2011	The Court, Gaziano, RAJ. order jury of fourteen (14) members impanelled for trial. Jury of fourteen members impanelled but NOT sworn at the joint request of the parties.		
04/11/2011	Hearing on potential conflict held. Transcript of hearing is IMPOUNDED.		
04/11/2011	Continued to 4/12/11 by agreement for trial. Gaziano, RAJ. - G. Lundgren, ADA - M. Brooks, ADA - R. Scapicchio, Atty - N. King, CR.		
04/11/2011	Commonwealth files: Proposed Individual Voir Dire Questions	67.1	
04/11/2011	Defendant's Supplemental Motion for Suggested Questions to the Jury	67.2	
04/12/2011	Brought into court.		

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
04/12/2011	Hearing re: conflict held before Gaziano, RAJ. Defendant waives conflict and elects to keep Attorney Scapicchio as his counsel.		
04/12/2011	Jury of fourteen members sworn. Trial begins before Gaziano, RAJ.		
04/12/2011	Defendant's oral Motion for Mistrial made after Commonwealth's opening and denied.		
04/12/2011	Trial continues. Gaziano, RAJ - N. King, CR.		
04/13/2011	Brought into court.		
04/13/2011	Trial continues before Gaziano, RAJ with jury of fourteen members.		
04/13/2011	Defendant's oral Motion for Mistrial made and denied.		
04/13/2011	Trial continues. Gaziano, RAJ - N. King, CR.		
04/14/2011	Brought into court.		
04/14/2011	Hearing re: 5th Amendment privilege of witness Deangelo Taldon. Attorney Randy Goia appears with witness. After hearing, the Court, Gaziano, RAJ finds the witness has a valid 5th Amendment privilege and is excused. The Court orders transcript of this proceeding IMPOUNDED.		
04/14/2011	Trial continues before Gaziano, RAJ with jury of fourteen members. Gaziano, RAJ. - N. King, CR.		
04/15/2011	Defendant brought into court .		
04/15/2011	Deft files motion in limine to exclude out of Court recorded statements of other witnesses	68	
04/15/2011	MOTION (P#68) denied after hearing. Trial continues before Gaziano, J. with fourteen (14) jurors present.		
04/15/2011	Appointment of Counsel [Frank Santisi) , pursuant to Rule 53 to represent witness Michael Florence . Habe faxed to MCI Concord. Gaziano, RAJ - N. King, CR		
04/19/2011	Defendant brought into court		
04/19/2011	Regarding jury trial: Trail continues with 14 jurors present.		
04/19/2011	Commonwealth files 14th notice of discovery.	69	
04/19/2011	Commonwealth files 15th notice of discovery.	70	
04/19/2011	Defendant's oral motion for continuance, after hearing Allowed. Gaziano, J. - G. Lundgren - M. Brooks, ADA. - N. King, Court Reporter. - R. Scarpicchio, Attorney.		
04/20/2011	Defendant brought into court		
04/20/2011	Deft files Motion to preclude prosecution from arguing that Tramane Smith is credible at all. After hearing Denied.	71	

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
04/20/2011	Deft files Motion to preclude improper and unconstitutional closing argument by the prosecutor. After hearing Denied.	72	
04/20/2011	Regarding jury trial: Trial continues with 14 jurors present.		
04/20/2011	Court orders Jury reduced to 12 in number, Juror #204 in seat 13 and Juror #181 in seat 10 are chosen as alternates. Jury begins deliberations. Gaziano J. - G. Lundgren - M. Brooks, ADA. - N. King, Court Reporter. - R. Scapicchio, Attorney.		
04/21/2011	`Defendant brought into court		
04/21/2011	Regarding jury trial: Jury of 12 members continue to deliberate - 2 Alternates.		
04/21/2011	RE Offense 1:Guilty verdict		
04/21/2011	Verdict affirmed, verdict slip filed	73	
04/21/2011	RE Offense 2:Guilty verdict		
04/21/2011	Verdict affirmed, verdict slip filed	74	
04/21/2011	RE Offense 3:Guilty verdict		
04/21/2011	Verdict affirmed, verdict slip filed	75	
04/21/2011	RE Offense 4:Guilty verdict		
04/21/2011	Verdict affirmed, verdict slip filed	76	
04/21/2011	RE Offense 5:Guilty verdict		
04/21/2011	Verdict affirmed, verdict slip filed	77	
04/21/2011	Continued to 4/22/2011 for hearing on Sentencing (Frank M Gaziano, Regional Administrative Justice)		
04/21/2011	Mittimus without bail issued to Suffolk County Jail (Nashua Street) Gaziano, J. - G. Lundgren and M. Brooks, ADA. - N. King, Court Reporter. - R. Scapicchio, Attorney		
04/22/2011	Defendant brought into court		
04/22/2011	Commonwealth moves for sentencing. - Defendant sentenced As to Offense #002 - M.C.I. Cedar Junction - MAX. - Twenty (20) years - MIN. Nineteen (19) years to begin from and after sentence now serving. (Frank M Gaziano, Regional Administrative Justice)		
04/22/2011	Defendant sentenced to as to offense #001 - M.C.I. Cedar Junction - MAX. Fifteen (15) years - Min. Eleven (11) years. to begin from and after offense #002. As to offense #004 - M.C.I. Cedar Junction. - MAX. Five (5) years . - MIN. Four (4) years to be served concurrent with offense #001. As to offense #005 - Suffol County House of Correction at South Bay - for a term of Two and One half (2 1/2) years to begin from and after offense #004. (Frank M Gaziano, Regional Administrative Justice)		

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
04/22/2011	Notified of right of appeal under Rule 64		
04/22/2011	Notified of right of appeal under Rule 65		
04/22/2011	Victim-witness fee assessed: \$90.00 (Frank M Gaziano, Regional Administrative Justice)		
04/22/2011	Defendant warned per Chapter 22E Sec. 3 of DNA		
04/22/2011	Defendant warned of potential loss of license.		
04/22/2011	RE: offense #003 and second subsequent portion of #004 Dismissed upon oral motion of the Commonwealth. Gaziano, J. - G. Lundgren and M. Brooks, ADA. - N. King Court Reporter. - R. Scapicchio, Attorney.:		
04/22/2011	Deft files Motion to dismiss Court orders Commonwealth to file response within 60 days.	78	
04/22/2011	Deft files Notice of appeal	79	
04/22/2011	Commonwealth files: Sentencing Recommendation	77.1	
04/22/2011	Defendant's Sentencing Memorandum filed.	77.2	
05/10/2011	Victim-witness fee paid as assessed. 90.00		
05/17/2011	Commonwealth files Opposition to Defendant's Motion to Dismiss Based on Speedy Trial Grounds. Copy and Docket sheets sent to Gaziano, RAJ.	80	
06/27/2011	Memorandum of Law and Order on Defendant's Motion to Dismiss filed by the Court, Gaziano, RAJ. denying the defendant's Motion fo Dismiss. Gaziano, RAJ. (Parties notified with copy).	81	
08/26/2011	Limited Appearance of Deft's Atty: Wendy H Sibbison	82	
08/26/2011	Court Reporter King, Nancy M. is hereby notified to prepare one copy of the transcript of the evidence of 04/08/11,12,13,14,15,19,20,21,22,2011. Motions Impanelment, Trial, Verdict and Sentencing		
12/16/2011	Transcript of testimony received volumes # 1,2,3,4,5,6 from Transcript of proceedings from Court Reporter King, Nancy M.		
12/23/2011	Transcript of testimony received volumes # 7,8,9,10 from Transcript of proceedings from Court Reporter King, Nancy M.		
02/07/2012	Notice sent to attorneys that transcripts are available. J Zanini and W. Sibbison.		
02/13/2012	Certificate of delivery of transcript by clerk filed.W. Sibbison	83	
02/23/2012	Notice of completion of assembly of record sent to clerk of Appeals Court and attorneys for the Commonwealth and defendant.		
02/23/2012	Two (2) certified copies of docket entries, original and copy of transcript, two (2) copies of exhibit list and copy of the notice of appeal(Paper #79) each transmitted to clerk of appellate court.		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
02/29/2012	Notice of Entry of appeal received from the Appeals Court. Case entered in the Appeals Court on 2/24/12	84	
06/18/2012	Notice of Docket Entry received from the Appeals Court: re: P#6 The Suffolk Superior Court may provide a copy of the Clerk's minutes in this matter to counsel *Notice/Attest.	85	
06/25/2012	NOTICE of APPEAL FILED by Donald Williams on Denial of Motion to Dismiss.	86	
03/14/2013	Commonwealth files Motion to correct the docket pursuant to Mass. R. APP. P. 8(e).	87	
03/14/2013	Notice sent on 3/18/2013 to Gaziano, J. with copy of Motion and docket sheets.		
03/15/2013	Commonwealth files: Motion to supplement the record pursuant to Mass. R. App. p. 8 (e)	89	
03/21/2013	Deft files: Opposition to Commonwealth motion to correct docket. (Notice to Gaziano, J. w/copy & docket sheets - on 3/27/13)	88	
03/22/2013	RE: Motion (#P87) The defendant shall file a response to the Commonwealth's motion to correct the docket within 30 (thirty) days of this receipt of this order. (Gaziano, JSC. 3-22-13)		
03/29/2013	After reviewing the submissions and the transcript, the Court, Gaziano, RAJ. allows the Commonwealth's motion and strikes the docket entry. On July 21, 2009, the parties agreed to continue 07-11314 and 08-11227 for back-to-back trials starting November 30, 2009. The parties did not request, and the Magistrate did not order, 07-11314 or 08-11227 to track the homicide, which was scheduled for September 14, 2010. Gaziano, RAJ. (Notice sent).		
04/23/2013	Notice of docket entry received from Appeals Court. Please take note that, with respect to the motion for a limited remand to the Superior Court, filed by Commonwealth. (paper #22), on April 18, 2013, the RE#22: the within is treated as a motion to stay and is allowed. this appeal is stayed to 5/20/13 as to the disposition of the motion to correct the docket. Notice/attest.	90	
05/14/2013	Commonwealth files Response to the defendant's motion for a ruling that his notice of appeal is timely (Locke, RAJ- w/copy)	91	
05/15/2013	Defendant's Motion for Orders (1) Correcting the Docket Nunc Pro Tunc to Accurately Reflect the Date of Entry of this Court's Order Allowing the Commonwealth's Motion to Correct the Docket, and (2) Ruling that Williams' Notice of Appeal From that Order is Timely filed and allowed on May 22, 2013. Gaziano, RAJ. (Notice sent to parties).	92	
05/15/2013	Defendant's Notice of Appeal filed. (Time of filing to run from notice sent to parties of Ruling from Gaziano, RAJ. on May 6, 2013). (See Paper #92).	93	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
06/27/2013	Appearance of Deft's Atty: Patricia A. DeJuneas, filed.		
07/02/2013	Notice of Docket entry received from Appeals Court. Re: #28 the stay of appellate proceedings is hereby vacated. Defendants appeal from the Trial Court's allowance of the Commonwealth's motion to correct the docket is hereby consolidated with the instant appeal without necessity of further assembly of the record. Trial court to transmit two copies of the updated docket sheets and the notice of appeal to this court forthwith. Defendant given leave to file a supplement to his brief, not to exceed ten pages, addressing any issues raised by the correction to the trial court docket, on or before 7/26/13, upon the filing of any supplement by the defendant, the Commonwealth shall have 21 days to respond with a supplement to its brief, not to exceed ten pages.	94	
03/14/2014	Rescript received from Appeals Court; judgment AFFIRMED Order of June 27, 2011 denying Motion to Dismiss affirmed.. Order of March 29, 2013 allowing motion to correct docket affirmed.	95	
12/01/2016	Commonwealth's Motion for proposal for the production and redaction of material held by prior defense counsel. (Roach, RAJ with copy)	96	
12/02/2016	The following form was generated: A Clerk's Notice was generated and sent to: Other interested party: Christine Roach RAJ		
12/22/2016	ORDER: Order for signature by the Court directing the Office of the District Attorney to constitute a Taint Team for the purpose of reviewing and redacting responsive case files of 0884CR11227. The Deadline for this order is 1/6/17. Gordon, J.	97	
12/23/2016	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Patricia A. DeJuneas, Esq. Attorney: Wendy H Sibbison, Esq. Attorney: John P Zanini, Esq. Attorney: Nicholas Brandt, Esq. Attorney: Sarah Montgomery Lewis, Esq. Witness: Leonard Hill Holding Institution: MCI - Cedar Junction (at Walpole) Other interested party: Christine Roach RAJ		
12/23/2016	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Patricia A. DeJuneas, Esq. Attorney: Wendy H Sibbison, Esq. Attorney: John P Zanini, Esq. Attorney: Nicholas Brandt, Esq. Attorney: Sarah Montgomery Lewis, Esq. Witness: Leonard Hill Holding Institution: MCI - Cedar Junction (at Walpole) Other interested party: Christine Roach RAJ		
12/30/2016	General correspondence regarding Commonwealth files Designation of Taint Team	98	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	(copy Sent to Roach,RAJ w/Copy of Docket)		
02/02/2017	Commonwealth 's Request for Guidance Regarding Interest of Third-Party Record Holder. Filed. (Roach, RAJ w/ copy)	99	
02/10/2017	Endorsement on , (#99.0): Other action taken Parties to appear at hearing before the Court for the reasons raised by the pleadings at a time and place convenient to both parties. Roach, RAJ. parties notified		
02/10/2017	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 02/23/2017 11:00 AM Motion Hearing.		
02/23/2017	Event Result: Hearing held re; records. after hearing the Court will appoint counsel for the defendant . The following event: Motion Hearing scheduled for 02/23/2017 11:00 AM has been resulted as follows: Result: Held as Sched Brought into court Applies To: Williams, Donald R (Defendant); Scapicchio, Esq., Rosemary C (Attorney) on behalf of Williams, Donald R (Defendant); Brandt, Esq., Nicholas (Attorney) on behalf of Commonwealth (Prosecutor); Event Judge: Roach, Christine M- M. Pollier, CR		
06/22/2017	Event Result: Deft. not in court. Case continued by agreement to 7/27/17 CtRm 906 at 2PM Hrg Re: Appointment of counsel and Status Habe to MCI Norfolk Roach, RAJ M. Feey for M. Brandt		
06/22/2017	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 07/27/2017 02:00 PM Hearing for Appearance / Appointment of Counsel.		
07/27/2017	Brought into court. Event not hed, Note; no Atty available for appointment Continued by agreement to 8-3-17 re appointment of counsel(906). 930am, Habe issued Roach, RAJ. - S Lewis, ADA. - FTR		
07/27/2017	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 08/03/2017 09:30 AM Hearing for Appearance / Appointment of Counsel.		
08/01/2017	Event Result: The following event: Hearing for Appearance / Appointment of Counsel scheduled for 08/03/2017 09:30 AM has been resulted as follows: Result: Not Held Reason: Matter referred by Order of Court Roach RAJ to the 5th Criminal session ctrm 817 to be heard before Krupp J. Note: the 8/3/17 event is canceled (Habe canceled) Parties to coordinate with 5th session Clerk re: Next event for appointment of Counsel. Habe to MCI Norfolk needed. ADA S.Lewis and Atty M.Roitman who was going to accept appointment on 8/3/17 notified via electronic mail.		
08/02/2017	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 08/03/2017 09:30 AM Hearing for Appearance / Appointment of Counsel. *****PLEASE CANCEL HABE FOR 8/3/17, MATTER IS BEING RESCHEDULED*****		
08/16/2017	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 08/17/2017 10:00 AM Hearing for Appearance / Appointment of Counsel.		
08/17/2017	Event Result: Deft brought into court The following event: Hearing for Appearance / Appointment of Counsel scheduled for 08/17/2017 10:00 AM has been resulted as follows: Result: Held as Scheduled		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Krupp J - P Davenport Atty - F LeRoux C/R		
08/17/2017	Attorney appearance On this date Paul Joseph Davenport, Esq. added as Appointed - Indigent Defendant for Defendant Donald R Williams Appointment made for the purpose of Appellate action - for the limited purpose on the instant matter 08-11227 to determine William's access to files in the custody of Attorney Rosemary Scappichio -- Appointment made by Judge Hon. Peter B Krupp. Krupp J - P Davenport, Atty		
09/29/2017	Commonwealth 's Response to Defendant's Motion to End Protective Order filed (Copy and Docket Sent to Roach, RAJ)	100	
01/26/2018	Defendant Not in Court; Presence Excused Post Conviction Status Hrg Held Before roach RAJ Judge: Roach, Christine M The following event: Conference to Review Status scheduled for 01/26/2018 09:30 AM has been resulted as follows: Result: Held as Scheduled After Hrg, The Court Roach,RAJ Orders ADA N.Brandt + Atty L.Travayiakis to Draft a Proposed Order citing specific Docket Numbers for the Courts Review with Respect to the Current post Conviction Issues Note: ADA N.brandt Indicates he will have Proposed order Filed by the End of Business today After Review of all files, Defense Counsel to Coordinate with Clerk in Session re; Next Date for Status Roach,RAJ - N.brandt, ADA - L.Travayiakis, Atty -R.LeRoux,C.R.		
01/29/2018	ORDER: Joint Proposed Order for Transfer of Materials filed and ALLOWED - Roach RAJ, So Ordered (ADA N.Brandt and Atty L.Travayiakis each notified with copy via electronic mail) Judge: Roach, Christine M	101	 Image
10/12/2018	Commonwealth 's Motion for limited release from protective order to produce post conviction discovery filed (Copy w/docket to Sanders, J)	102	 Image
10/31/2018	Endorsement on Motion for limited release from protective order to produce post-conviction discovery, (#102.0): ALLOWED (See endorsement P # 76 in 09-10027) Copy to N Brandt, ADA and L Travayiakis, Atty Judge: Sanders, Hon. Janet L		
10/31/2018	Attorney appearance On this date Eleftherios Konstantinos Travayiakis, Esq. added as Associate Private Counsel for Defendant Donald R Williams		
10/31/2018	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Eleftherios Konstantinos Travayiakis, Esq. Attorney: Nicholas Brandt, Esq.		
04/18/2019	Defendant 's Motion to Amend Protective Order Copy with docket sheets sent to Roach, RAJ (Filed)	103	 Image
04/29/2019	Endorsement on Defendant 's Motion to Amend Protective Order, (#103.0): Other action taken "Commonwealth to respond to this motion within 30 days, by no later than May 30, 2019" (Copy to N. Brandt, ADA and L. Travayiakis, Attorney)		 Image
05/30/2019	Opposition to paper #103.0 Defendant's motion to amend protective order filed by Commonwealth(Copy with docket sheets sent to Roach, RAJ)	104	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
06/10/2019	Endorsement on Defendant 's Motion to Amend Protective Order, (#103.0): DENIED "following another full review of this file, the motion is denied. A general request for transcripts without more, cannot be supported based on the unique history of this case, absent a pending substantive motion for new trial supported by affidavit." (Copy of endorsement to J. Zanini, ADA, L. Travayiakis, Attorney, N. Brandt, ADA) Judge: Roach, Christine M		 Image
11/04/2019	Attorney appearance On this date Paul B Linn, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth		
11/04/2019	Commonwealth Paul B Linn, Esq.'s Notice of Appearance (filed)	105	 Image
02/22/2023	Defendant 's Motion for New Trial, with Affidavits (Notice sent to Ullman-RAJ with Copy of Motion and Docket Sheets).	106	 Image
02/23/2023	Endorsement on Motion for New Trial, (#106.0): Commonwealth to respond by 5/23/23. (notice and copy of endorsement sent to Atty M. Schnipper and ADA P. Linn)		 Image
02/23/2023	Attorney appearance On this date Merritt Spencer Schnipper, Esq. added for Defendant Donald R Williams		
02/23/2023	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Merritt Spencer Schnipper, Esq. Schnipper Hennessy PC 25 Bank Row Suite 2S, Greenfield, MA 01301 Prosecutor, Attorney: Paul B Linn, Esq. Suffolk County District Attys Office One Bulfinch Place, Boston, MA 02114		
05/01/2023	Defendant 's Motion for post-conviction discovery. Filed. Notice, copy, and docket sent to Ullmann, J.	107	 Image
05/01/2023	Defendant 's Motion for post-conviction discovery with affidavit. (AMENDED). Notice, copy, and docket sent to Ullmann, RAJ.	108	 Image
05/08/2023	Endorsement on Defendant 's Motion for post-conviction discovery with affidavit (AMENDED), (#108.0): Other action taken Commonwealth to respond by 8/8/23. (Copy of endorsed motion sent to M. Schnipper, Atty and P. Linn, ADA via electronic mail)		 Image
05/26/2023	Commonwealth 's Motion for an Enlargement of Time for Filing Its Opposition, with Affidavit, filed. (Copy, Notice, and Docket sent to Ullmann, RAJ)	109	 Image
05/26/2023	Endorsement on Motion for an enlargement of time for filing its opposition, (#109.0): ALLOWED filed and allowed on 06/09/2023		 Image
06/07/2023	Opposition to paper #106.0 Motion for a New Trial filed by Commonwealth(Notice sent to McCarthy, J. with Copy of Opposition and Docket Sheets)	110	 Image
06/12/2023	Docket Note: Case Assigned to Judge Kathleen McCarthy		Image
06/16/2023	Defendant 's Assented to Motion for leave to file reply filed. (copy of motion, docket sheets, and Clerks Notice sent to McCarthy-Neyman, J)	111	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/20/2023	Endorsement on Motion for leave to file reply, (#111.0): ALLOWED allowed by McCarthy-Neyman, Hon. Kathleen on 06/20/2023 filed. Judge: McCarthy-Neyman, Hon. Kathleen		 Image
07/21/2023	Defendant 's Reply to Commonwealths Opposition to the Defendant's Motion for a New Trial. Filed (Copy of the Reply and Docket Report Sent to McCarthy Neyman, J)	112	 Image
09/01/2023	Commonwealth 's Response to the defendant's amended motion for postconviction discovery, filed. (Copy,notice, docket sent to Judge McCarthy Neyman, J)	113	 Image
09/13/2023	Defendant 's request for status conference, filed Copy of motion, notice and docket sheets sent to Honorable Judge, McCarthy-Neyman	114	 Image
10/24/2023	Defendant 's Request for Status Conference, filed Notice sent to McCarthy-Neyman, J. with (P.#115)	115	 Image
12/04/2023	Defendant 's Motion to compel discovery production, filed. (notice, copy, and docket sent to Judge McCarthy-Neyman)	116	 Image
12/14/2023	Docket Note: Procedural order received via email from Judge McCarthy-Neyman on this date. Procedural order sent to parties via Electronic email on this day. Hard copy was sent to clerk's office in the mail, and will be docketed once received.		
12/14/2023	Endorsement on Motion to compel discovery production, filed., (#116.0): ALLOWED (upon review the motion is allowed). (notice and copies sent to ADA:, and Attorney:		
12/21/2023	Opposition to paper #107.0 Defendant's Motion for Post-conviction discovery. filed by Commonwealth (copies, notice, and docket sheets sent to Judge McCarthy-Neyman)	117	 Image
12/21/2023	ORDER: Procedural Order Background, filed.	118	 Image
12/21/2023	Endorsement on Motion to compel discovery production, (#116.0): ALLOWED (upon review the motion is Allowed.) (copies, and notice sent to ADA: Linn, Paul B, and Attorney: Schnipper, Merritt Spencer)		 Image
12/26/2023	Defendant 's Motion to stay for purposes of completing discovery, Filed. (notice, copy, and docket sent to Judge McCarthy-Neyman)	119	 Image
01/23/2024	Docket Note: Endorsement on Paper #119 (Defendant's motion to stay for purposes of completing discovery) received via email from Judge McCarthy-Neyman on this date. Endorsement on motion sent to parties via Electronic email on this day. Hard copy to be mailed to clerk's office, and will be docketed once received. Clerk also working with parties and Judge McCarthy-Neyman on selecting hearing RE: Discovery on a Friday at 2 PM via Zoom in Courtroom 713.		
01/26/2024	Endorsement on Motion to stay for purposes of completing discovery filed, (#119.0): ALLOWED "Upon review, motion is ALLOWED in part. The motion to stay is ALLOWED. The clerk shall schedule a hearing on outstanding discovery in due course." (McCarthy-Neyman, J.) (Copy of endorsement emailed to parties at an earlier date)		
01/31/2024	Habeas Corpus for defendant issued to MCI - Concord returnable for 02/23/2024 02:00 PM Motion Hearing. *VIA ZOOM* Meeting ID: 160 5224 9673 Passcode: **NO PASSCODE** (Original HABE mailed to MCI Concord and emailed to a member of MCI Concord Records Department)	120	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	CANCELED. Canceled HABE faxed to MCI Concord and sent via Email		
01/31/2024	Docket Note: Defense Attorney (Merritt Schnipper) represents defendant is in custody at MCI Concord. Zoom HABE issued.		
02/09/2024	Habeas Corpus for defendant issued to MCI - Concord returnable for 02/23/2024 02:00 PM Motion Hearing. *LIVE TRANSPORT*	121	
02/09/2024	Docket Note: Per Judge McCarthy-Neyman's order, 2/23/2024 Motion hearing date will now be a LIVE HEARING. The parties will appear live, and a LIVE HABE has been issued to MCI Concord via Email.		Image
02/22/2024	Event Result:: Motion Hearing scheduled on: 02/23/2024 02:00 PM Has been: Canceled For the following reason: By Court prior to date Comments: Court unavailable this day due to funeral Hon. Lynn C Rooney, Presiding Staff: Michelle Pierce, Assistant Clerk Mary Regan, Assistant Clerk Magistrate		
02/22/2024	General correspondence regarding Letter requesting for information re: Donald Williams Motion for New Trial P# 106 Hearing Attorney: Schnipper, Esq., Merritt Spencer Judge: McCarthy-Neyman, Hon. Kathleen Applies To: Schnipper, Esq., Merritt Spencer (Attorney) on behalf of Williams, Donald R (Defendant)	122	 Image
02/29/2024	Habeas Corpus for defendant issued to MCI - Concord returnable for 04/05/2024 02:00 PM Motion Hearing. **LIVE TRANSPORT** Judge: McCarthy-Neyman, Hon. Kathleen Applies To: MCI - Concord (Holding Institution); Event Judge: McCarthy-Neyman, Hon. Kathleen	123	 Image
04/05/2024	Defendant is brought into court from MCI - Concord. Hearing Re: Defendant 's Motion for post-conviction discovery - AMENDED (P #108) is held before McCarthy-Neyman, J. After hearing, the Court, McCarthy-Neyman, J., indicates that she will issue an order re: outstanding discovery and whether the Court will conduct an evidentiary hearing. Hon. Kathleen McCarthy-Neyman, Presiding Appeared: P. Linn, ADA - M. Schnipper, Atty. - FTR (2:10 PM)		
04/05/2024	List of exhibits Marked for Identification	124	 Image
07/08/2024	Defendant 's Request for subpoena to executive office of trial court, filed. (copy, notice and docket sheets sent to Judge McCarthy Neyman)	125	 Image
07/08/2024	Defendant 's Request for ruling on outstanding discovery requests, filed. (copy, notice and docket sheets sent to Judge McCarthy Neyman)	126	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/12/2024	Other 's Executive office of the trial court's opposition to defendant Donald William's request for subpoena, filed with affidavit Copy of motion, docket sheets and clerks notice sent to Honorable Judge McCarthy-Neyman	127	 Image
07/22/2024	Defendant 's Reply To executive office of trial court's opposition to defendant Donald Williams's request for subpoena, filed Notice, Copy and Docket Sheets Sent To Judge McCarthy-Neyman	128	 Image
07/26/2024	Defendant 's Supplement to Motion for New Trial and Request for Further Discovery, with Affidavit (Copy of Supplement and Docket Sheets Sent To Judge McCarthy-Neyman)	129	 Image
09/23/2024	Defendant 's Motion to Stay Execution of Sentence, with Supporting Documents, filed (Copy, Notice and Docket sent to Hon. McCarthy-Neyman)	130	 Image
10/21/2024	ORDER: Commonwealth to Respond to Defendant 's Motion to Stay Execution of Sentence within 30 days of this date. So Ordered. (Parties notified of Order via Electronic Mail) Judge: McCarthy-Neyman, Hon. Kathleen	131	
11/20/2024	Opposition to paper #130.0 Defendant 's Motion to stay his sentence while his motion for new trial is pending filed by Commonwealthfiled Copy of opposition, original motion, docket sheets and clerks notice sent to Judge McCarthy-Neyman	132	 Image
01/07/2025	ORDER: Order on Amended Motion for Postconviction Discovery, Request for Subpoena to Executive office of the Trial Court and Defendant's Request for Ruling on Outstanding Discovery (Paper No. 108, Paper No. 125, and Paper No. 126) filed (Copy of Order sent to parties via electronic mail)	133	 Image
01/31/2025	Endorsement on Motion to stay execution of sentence, (#130.0): DENIED "Upon review and careful consideration the motion is DENIED. The defendant does not have a likelihood of success on appeal (See Memorandum of Decision and Order on defendant's motion for New Trial issued this date) and (2) for the reasons outlined in the Commonwealth's opposition (Paper #132 at pp 17-18), the defendant's release would pose a security risk. See Commonwealth V. Nash, 486 Mass, 394, 406 (2020). (McCarthy-Neyman, J.) (Copy of endorsement sent to parties via electronic mail)		 Image
01/31/2025	ORDER: Memorandum of Decision and Order on Defendant's Motion for New Trial (Paper No. 106) filed. Defendant's Motion for New Trial is DENIED. (Copy of Decision sent to parties via electronic mail)	134	 Image
02/14/2025	CD of Transcript of 04/05/2024 02:00 PM Motion Hearing received from Jennifer Ferris.		
02/20/2025	Notice of appeal filed by defendant regarding the Court's January 31, 2025 order denying motion for new trial and all adverse rulings made by the Court subsidiary to that Order.	135	 Image
02/21/2025	Attorney appearance On this date David D McGowan, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth		
02/21/2025	Appeal: Statement of the Case on Appeal (Cover Sheet).	136	 Image
02/21/2025	Notice to Clerk of the Appeals Court of Assembly of Record		 Image
02/21/2025	Notice of assembly of record sent to Counsel		 Image
02/21/2025	Appeal entered in Appeals Court on 02/21/2025 docket number 2025-P-0201	137	 Image
			Image

Case DispositionDispositionDateCase Judge

Disposed by Jury Verdict

04/21/2011

Krupp, Hon. Peter B

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK SUPERIOR COURT

COMMONWEALTH OF MASSACHUSETTS

v.

DONALD WILLIAMS

)
)
)
)
)
)
)

No. 0884CR11227

AFFIDAVIT OF MICHELLE GALLOWAY

Michelle Galloway deposes and states:

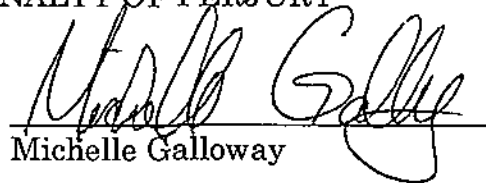
1. My name is Michelle Galloway. I make the following statements based on personal knowledge.
2. Donald Williams is my nephew. His mother Jeanette is my sister.
3. Approximately a year before Donald's trial in this case, I drove to Dorchester District Court to drop Jeanette and my niece Okemia off to attend one of his hearings. A few minutes after I dropped them, a police cruiser came up behind me with its lights on. When I went to pull over, police instructed me not to stop on the street but instead to pull into the driveway behind a Kentucky Fried Chicken restaurant. The officers asked me 'do you know who you had in your car?' When I told them of course I did, the people were my family, the officers questioned me for fifteen or twenty minutes about what I knew about Jeanette and Donald and what Jeanette and I had talked about in the car. I found this experience unnerving and stressful.
4. Some time later, after I had moved from Boston to Randolph, two plainclothes police officers came to my home and said they wanted to talk to me about my sister and nephew. The officers showed me pictures of several people, all members of my family, and asked me whether I knew them. I responded that of course I did, all these people were relatives. One of the officers had a manila envelope that contained transcript of jail phone conversations between Donald and Jeanette. The officers went through the transcripts and asked me to clarify what Donald and Jeanette were discussing at various times, as well as about how they usually communicated. I told them had not monitored or participated in the calls, and could not explain them. I also told the officers that whatever Donald and Jeanette were talking about was between the two of them, mother and son.

5. Jeanette asked that I attend some of Donald's trial, and when his trial began I went to Suffolk Superior Court for that purpose. As I went to enter the courtroom, I saw police officers seated at a long black desk near the door. On the desk there was a book or album containing photographs of people as well as some papers with a list of names. Police at the desk asked me for my name, which I provided. Then they asked me to show photo identification. After my recent experiences dealing with police, and the stress they had caused, I was not inclined to share any information about myself with them. I therefore left the courthouse.

6. A day or two after this experience, I returned to Suffolk Superior Court and again tried to attend Donald's trial. When I approached the courtroom I saw the same situation as before, with officers taking name and checking identifications of people coming into court. This time I did not even bother to try entering. I simply turned around and left the courthouse.

SWORN UNDER PENALTY OF PERJURY

February 9, 2023


Michelle Galloway

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK SUPERIOR COURT

COMMONWEALTH OF MASSACHUSETTS	)	
	)	
v.	)	No. 0884CR11227
	)	
DONALD WILLIAMS	)	
	)	

AFFIDAVIT OF OKEMIA CREDLE

Okemia Credle deposes and states:

1. My name is Okemia Credle. I make the following statements based on personal knowledge.

2. Donald Williams is my cousin. His mother Jeanette is my aunt.

3. My brother Tyrone Credle was shot and killed in Boston in January 2008. On the night Tyrone was killed, a Boston Police detective showed up at the hospital to talk to my family. The officer did not seem interested in my brother's shooting, and was focused on questioning us about Donald.

4. Shortly after Tyrone was killed and while we were preparing for his funeral, I was driving with my Aunt Jeanette on Intervale Street in Roxbury. The police who stopped us told me my cousin Donald 'is a really bad person' and that they wanted to question me. I then spent more than two hours in a cell at the police station on Dudley Street. I told police I did not want to talk without a lawyer present, and they did not try to keep questioning me after that.

5. After Donald was charged with shooting Tramane Smith and after Tyrone was killed (I had also lost my parents recently) I decided to leave Boston. I moved to Ohio in early 2008 and started a job working at a temp agency. A few months into my new job, I got a call from human resources telling me to come to a meeting. When I entered the meeting room, I saw the same Boston detective who had questioned me and my family at the hospital after Tyrone was shot. The detective asked me 'why are you here?' I later learned the detective had also been to my house in Ohio. That evening I was fired from my job.

6. I went back to Boston for Donald's trial. When I tried to enter the courtroom at Suffolk Superior Court, a court officer and Boston police officer were sitting outside the courtroom. They asked me to sign in and to show identification. On the table in front of them was a book of photographs they were looking at. I refused to provide any identification and left the courthouse.

7. The next day I went back to Suffolk Superior Court because I wanted to support Donald and my Aunt Jeanette. However, I saw the same thing as before, with the officers checking identification. I did not feel comfortable giving my personal information to police after having been harassed the way I had been, so I left.

SWORN UNDER PENALTY OF PERJURY

February 11, 2023


Okemia Credle

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK SUPERIOR COURT

COMMONWEALTH OF MASSACHUSETTS)

v.)

DONALD WILLIAMS)

) No. 0884CR11227
)
)
)

AFFIDAVIT OF ROSEMARY SCAPICCHIO, ESQ.

Rosemary Scapicchio, Esq., deposes and states:

1. I am an attorney admitted to practice in Massachusetts. I represented Donald Williams at the trial of the above-captioned indictments.
2. Over the course of my career, I have litigated many cases involving the Boston Police Department and the Boston Regional Intelligence Center ("BRIC"), and have received BRIC materials in discovery on many occasions.
3. Attorney Merritt Schnipper, Mr. Williams' current counsel, has provided me with a copy of single sheet of names and photographs produced by the Commonwealth in post-conviction discovery. This sheet has a photograph of Mr. Williams in its top left corner and five rows of photographs, each with a name below it and some with a designation of custody status.
4. I have never seen this sheet of photographs before, and did not receive it in discovery while representing Mr. Williams. However, it appears to me that each of the photographs of a male person depicted on the sheet is drawn from BRIC files. These photographs have the same brown background as BRIC photographs I have received many times in discovery. This background can be contrasted with the blue background in photographs of female persons depicted on the sheet, which in my experience are more typical of registry of motor vehicles photographs. The typeface and positioning of the custody designations below certain photographs on the sheet is also typical of BRIC materials from my experience.
5. Mr. Williams' trial was heavily attended by both Boston Police officers and members of the Suffolk County District Attorney's Office. It is my recollection that while the trial was proceeding there were many more officers both inside the courtroom and standing or sitting on the benches in the hallway outside the courtroom than are present for the average criminal trial.

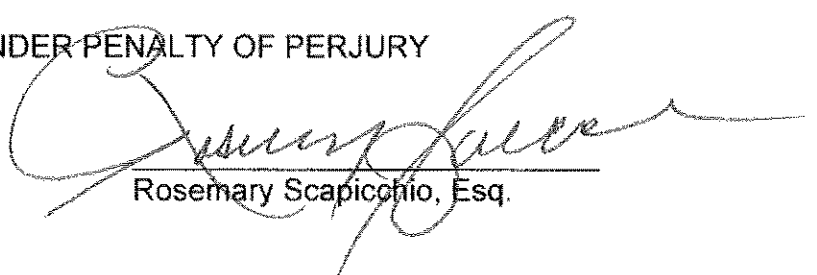
6. As is my practice in all trial cases, I arrived at court and entered the courtroom very early each day of Mr. Williams' trial and left the courtroom late, as I would go immediately out the court officers' doorway and to the holding cells to meet with my client after each day's proceedings concluded. I thus did not see how the identification-checking measure put in place by the Court at the Commonwealth's request was actually put into effect.

7. I do recall seeing a table set up near the entrance to the courtroom with two chairs at it. I recall seeing one of these chairs occupied by a court officer some of the time, but the other was consistently empty during the time I passed by. It was my understanding this table was used for purposes of checking in courtroom visitors. At my request, the table was moved away from the courtroom entrance at times the jury was entering or leaving the courtroom. I was concerned that, if the table was left in position by the courtroom entrance, its presence would intimidate members of the jury and/or suggest to them that Mr. Williams posed a particular danger.

8. It is my understanding that during the litigation of Mr. Williams' post-conviction claims, the Commonwealth has taken the position that the testimony of Memogne Lemothe and Michael Florence, both of whom were excused based on findings they had valid privileges against self-incrimination, was not of particular importance to the defense. In fact, I considered both men's testimony of great significance to Mr. Williams' defense because it would have contradicted core elements of the story Tremane Smith told from the stand about the night he was shot and the roles various people, including Lemothe and Florence, purportedly played in the events leading to the charges against Mr. Williams.

SWORN UNDER PENALTY OF PERJURY

July 22nd, 2024


Rosemary Scapicchio, Esq.



Donald Ray Williams
10/4/84
@ NSJ Awaiting Trial



Rahseem
Christian



Michael
Florence
DOC Custody -
Concord



Leonard Hill
DOC custody -
Bridgewater



Grant
Headley
NSJ Custody



Christopher
Tucker
HOC Custody



Memogne
Lamothe



Ronnie
Christian



Deangelo
Taldon



Ronjae
Williams



Chris Bates AKA:
Samuel Whiteside



Maasaii
Mathis



Sammy
Higginbottom



Derrick
Jones



Dasean
Taylor



Ashley
Senna



Shekeira
Springer



Janice
Rosario



Jeanette
Credle - Christian

The following individuals
have been contacted /
threatened by individuals
depicted above or with ties
to the above individuals.



Tramane
Smith



Joanna
Dean



Chaton
Brown

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CRIMINAL ACTION
No. 0884CR11227

COMMONWEALTH

vs.

DONALD WILLIAMS

**MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S MOTION FOR
NEW TRIAL (Paper No. 106)¹**

INTRODUCTION

On December 18, 2008, a Suffolk County Grand Jury indicted the defendant, Donald Williams ("Williams"), for assault and battery by means of a dangerous weapon, in violation of G. L. c. 265, § 15A; armed assault with intent to murder, in violation of G. L. c. 265, § 18B; possession of a firearm without a license, in violation of G. L. c. 269, § 10(h); carrying a firearm without a license (second offense), in violation of G. L. c. 269, § 10(a) & (d); and carrying a firearm without a license, in violation of G. L. c. 269, § 10(a).

On April 1, 2011, Williams filed a motion to dismiss the case on speedy trial grounds. The trial commenced on April 11, 2011, and on April 21, 2011, the jury returned its verdict finding the defendant guilty on all counts. On April 22, 2011, Williams renewed the motion to dismiss on speedy trial grounds and filed a notice of appeal from the convictions. On June 27, 2011, the trial judge denied the renewed motion to dismiss and Williams appealed from the order. While the appeals were pending, the Commonwealth filed a motion to correct the trial court's docket to reflect a tracking change, and the court granted the motion.

¹ The undersigned notes that all submitted materials were reviewed and considered by the court including the defendant's Supplement to Motion for New Trial and Request for Further Discovery (Paper No. 129).

The Appeals Court consolidated the direct appeal with the appeals from the order denying the motion to dismiss and the order granting the motion to correct the docket.² The Appeals Court affirmed the judgment and orders of the trial court. See Commonwealth v. Williams, 84 Mass. App. Ct. 1135 (2014).

The matter is currently before the court on Williams's Motion for New Trial Pursuant to Mass. R. Crim. P. 30(b) (Paper No. 106) (the "Motion for New Trial"). For the reasons explained below, the Motion for New Trial will be **DENIED**.³

BACKGROUND

The court summarizes the evidence presented by each side at trial. Certain relevant facts not mentioned here may be referenced during the court's discussion of the parties' arguments.

I. The Commonwealth's Case

On November 23, 2007, members of a street gang called the Greenwood Street Packers were gathered at house in Roxbury which belonged to Michael Florence ("Florence"). Those present included Florence, Williams, Tramane Smith ("Smith"), Leonard Hill, a/k/a "Gerald Hilliard" ("Hill"), Tyrone Credle ("Credle"), Memogne Lamothe ("Lamothe"), Deangelo Taldon ("Taldon"), and Florence's cousin.⁴ Tr. Vol. II, pp. 111-114, 134, 136-137.

² In the appeal, Williams argued that: (1) it was improper for the trial judge to correct the record to reflect the tracking change without an evidentiary hearing, and that the judge's correction of the docket to reflect the change was improper; (2) his right to a speedy trial under rule 36(b) was violated because he was not tried within twelve months of his arraignment; and (3) the delay violated his rights under the State and Federal constitutions because a witness for the Commonwealth could not accurately recall events due to the passage of time. See Commonwealth v. Williams, 84 Mass. App. Ct. 1135 (2014).

³ The trial judge, Superior Court Associate Justice Frank Gaziano, having been appointed an Associate Justice of the Supreme Judicial Court in 2016, the instant motion has been assigned to the undersigned for determination. See Mass. R. Crim. P. 38(c).

⁴ During trial, these individuals were often referred to by their nicknames: Mann (Donald Williams); Mane (Tramane Smith); Frog (Leonard Hill); T-Y (Tyrone Credle); Murder (Michael Florence); Me or Mis (Memogne Lamothe); and Scoop (Deangelo Taldon). The court will refer to them throughout this memorandum by their last names.

At the gathering, Smith told the group that they “should cut the gang-banging out and just make money,” that he was concerned about being arrested since they had just been raided by the “Feds,” and that he wanted to prioritize his kids. Tr. Vol. II, pp. 138-139. The group laughed at Smith’s statements. To show that he was serious, Smith returned his gun, which had been given to him by Williams. Tr. Vol. II, pp. 140.

In the early hours of November 24, 2007, the group dispersed for the night in two cars; one of the cars was a minivan and the other was a burgundy Ford (the “Ford”). Tr. Vol. II, pp. 147-148. Lamothe drove the minivan and Smith, Taldon, and Hill rode as passengers. Tr. Vol. II, pp. 149. Williams and Credle were in the Ford. Tr. Vol. II, pp. 136, 149. The cars drove towards Torrey Street in Dorchester to drop Smith off at the home of his girlfriend, Stacey Morris (“Morris”), where Smith had been staying. Tr. Vol. II, pp. 149-150.

As the two cars approached Torrey Street, Williams “chirped” (radioed) Hill’s phone telling him that he should not go down Torrey Street because it was “hot.”⁵ Tr. Vol. II, pp. 160-161, 163. The cars eventually stopped on the corner of Moody Street and Torrey Street. Tr. Vol. II, pp. 162, 164. After “dapping”⁶ everyone, Smith exited the minivan and saw Williams exit the Ford, which was in front of him. Smith also saw Williams go to the trunk with a jacket in his hands “for like two seconds,” before returning to the passenger seat of the Ford. Tr. Vol. II, pp. 164, 168-169.

As he was walking towards the sidewalk on the right side of the street, Smith heard Williams say, “Oh, so you ain’t gonna come dap niggas up to say you’re out?” Smith replied, “I’m not walking all the way across the street to dap you niggas up. I’ll see you all tomorrow.”

⁵ This term referenced that it was “not safe.”

⁶ “Dapping” is defined as “[t]he action or practice of greeting or acknowledging someone with a casual gesture, typically involving slapping palms, bumping fists, or snapping fingers.” See https://www.oed.com/dictionary/dapping_n2?tl=true (last visited Dec. 30, 2024).

Tr. Vol. II, pp. 164. Smith then walked towards Morris's house; he did not see the cars move or see anyone else around. Tr. Vol. II, pp. 171-172.

While he was walking, Smith sensed the need to look back. When he turned his face halfway around, he heard a shot. Tr. Vol. II, pp. 172-173. Then, Smith was unable to move his legs, which "just stayed standing up," but the top half of his body moved back and forth uncontrollably. Tr. Vol. II, pp. 173-174. Smith ultimately fell to the ground landing on his stomach. Tr. Vol. II, p. 174. As he fell, Smith heard a few more shots coming from behind him. Tr. Vol. II, pp. 174. While he was on his stomach, he looked up and saw Williams, who was holding a pistol with flashes coming from the muzzle, looking at him with a "dead stare." Tr. Vol. II, pp. 175. Smith turned his head away from the flashes; however, when he turned back, he heard Williams say, "Bitch ass nigga, that's what you get." Then, Williams got into the car and fled down Torrey Street. Tr. Vol. II, pp. 176-177, 179, 182.

During this encounter, Smith's phone fell out of his pocket and the phone and battery were lying separately on the street and on the sidewalk. Tr. Vol. II, p. 184. Smith crawled to the battery and reconnected it to the phone. Tr. Vol. II, pp. 184-187. Once the phone was working, Smith "chirped" Morris and said, "... just listen to what I got to say because I'm about to die," and "Just make sure you tell my brother, L-A, that Mann shot me, because he's the only one that's going to believe you." Tr. Vol. II, pp. 188. Within a few minutes, Morris and her sister, Stephanie, came outside and called the police. Tr. Vol. II, pp. 191. At trial, Smith testified that when he referred to "Mann," he was talking about Williams. Tr. Vol. II, p. 189.

At approximately 2:45 a.m. on November 24, 2007, Officer Pele James ("Officer James") arrived at Torrey Street and observed Smith, who was bleeding from the chest area, lying on the

sidewalk with his head hanging off the edge of the curb. Tr. Vol. IV, pp. 104, 106, 107. Minutes later, Officer Kevin Egan ("Officer Egan") arrived on the scene. Tr. Vol. IV, pp. 69-70, 72.

At trial, Officer James testified that he asked Smith if he knew who shot him, and Smith replied, "My man." Tr. Vol. IV, p. 111. Officer Egan also testified that when he asked Smith what happened, Smith said, "My man shot me." Upon further inquiry by Officer Egan, Smith said that it was "Donald Williams." Tr. Vol. IV, pp. 75-76. An ambulance transported Smith to Boston Medical Center, where he fell into a coma. Tr. Vol. II, p. 192; Tr. Vol. IV, pp. 77, 112.

On December 15, 2007, after Smith had regained consciousness, Detective Wayne Williams ("Det. Williams") showed Smith a photo array which consisted of eight photographs. Tr. Vol. 4, pp. 185, 188. Smith selected one of the photographs, positively identifying the individual as the suspect who shot him and said, "That's him. Donald Williams. I'm a million percent sure. . . . He shot me." Tr. Vol. III, pp. 27-30, 36-37; Tr. Vol. IV, pp. 189.

At trial, Lamothe, Florence, and Leonard were called to testify. All three witnesses invoked their Fifth Amendment right against self-incrimination and did not testify. Tr. Vol. IV, pp. 212-213. Tr. Vol. VI, pp. 91-94, 100-103.

II. The Defendant's Case

The crux of Williams's defense was that Smith's story was not credible. He argued that: 1) the police failed to verify the information given to them by Smith.; 2) Smith was incentivized to testify favorably for the Commonwealth because he was not being prosecuted for other crimes; and 3) the real shooter drove away from the scene in a gold Cadillac, which the police failed to pursue.

In support of these theories, defense counsel cross-examined Smith, highlighting inconsistencies between his initial statement to the police, which was given on December 15,

2007, his grand jury testimony, which was given on November 20, 2008, and his testimony in his father's trial on an unrelated matter in October 2009. The inconsistencies included:

- In his initial statement to the police, Smith said that someone named "Sheemie" was involved with the shooting, but in his grand jury testimony, he said that Sheemie was not involved, Tr. Vol III, pp. 186-189.
- In his initial statement to the police, Smith said that Florence ("Murder") was present when he was shot, but in his grand jury testimony, he said that Florence had stayed at home, Tr. Vol III, pp. 200, 221-222.
- In his initial statement to the police, Smith said that Lamothe ("Memogne") was not in the car with him and that Lamothe was in the car behind him, but at trial, Smith testified that Lamothe was driving the car that Smith was in, Tr. Vol III, pp. 223-224, 227-228.
- In his initial statement to the police, Smith attributed certain statements to Williams, but when Smith testified before the grand jury, he later attributed the same statements to Tyrone Credle, and then, at trial, he testified that both men said the same words, Tr. Vol 3, pp. 216-219.
- When testifying before the grand jury, Smith testified that Taldon ("Scoop") was involved with the shooting; however, Smith did not mention Taldon to the police during his initial statement. Tr. Vol. III, p. 190.

Williams also impeached Smith's credibility by introducing prior convictions and outstanding warrants against him. Tr. Vol. 3, pp. 179-185.

Williams also called Luis Daniel Sanchez-Toro ("Sanchez-Toro") and Odette Luszc ("Luszc") as witnesses. Sanchez-Toro was the general manager of the Best Western Plus Roundhouse Suites ("Roundhouse Suites") in Boston. Tr. Vol. VI, p. 116. He testified regarding business records produced by Roundhouse Suites in response to a trial subpoena; specifically, a receipt that was given to Lamothe for a checkout for a one-night stay. Tr. Vol. VI, pp. 117-118. The receipt indicated that a room was rented on November 23, 2007, and the checkout was on November 24, 2007, and the room was paid for by a credit card in the name of "Memogne Lamothe." Tr. Vol. VI, pp. 118-119. The receipt was marked as Exhibit 38. Tr. Vol. VI, p. 119.

Luszczyk was the manager of Greyhound Lines ("Greyhound") in Boston. Tr. Vol. VII, p. 10. She testified regarding business records produced by Greyhound in response to a trial subpoena; specifically, travel records related to Florence in the month of November 2007 for a trip from Boston to Charlotte, North Carolina. Tr. Vol. VII, p. 10. Luszczyk testified that business records from Greyhound's headquarters reflected that a ticket was issued to Florence in Boston on November 20, 2007, and that the travel destination was Charlotte, North Carolina. Tr. Vol. VII, pp. 12-13. The business record was marked as Exhibit 39. Tr. Vol. VII, p. 14.

DISCUSSION

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

"A judge may rule on a motion for a new trial, without an evidentiary hearing, if no substantial issue is raised in the motion or affidavits." Commonwealth v. Welch, 487 Mass. 425, 445 (2021). "In determining whether a substantial issue exists, 'a judge considers the seriousness of the issues raised and the adequacy of the defendant's showing on those issues.'" Commonwealth v. Upton, 484 Mass. 155, 162 (2020), quoting Commonwealth v. Barry, 481 Mass. 388, 401 (2019). With respect to the defendant's showing, he need not prove his motion's factual premise, but he must adduce sufficient credible evidence to "cast doubt on the issue." Id. at 162.

In support of the Motion for New Trial, Williams raises the following arguments: (1) the court room was partially closed during trial, which violated his right to a public trial under the Sixth Amendment to the United States Constitution and article 12 of the Massachusetts

Declaration of Rights; (2) the trial judge erred when he refused to require the Commonwealth to state a reason for its peremptory strike of a potential juror, a Black woman, which resulted in a structural error requiring reversal of the convictions; (3) Williams suffered from ineffective assistance of counsel because his appellate counsel failed to brief and argue the peremptory challenge issue on appeal; and (4) a new trial is warranted because there is newly available evidence from two witnesses which contradicts important aspects of the Commonwealth's case and would likely have been a real factor in the jury's deliberations.

I. Waiver of Claims

As an initial matter, the court notes that Williams has waived his public trial claim and his claim of structural error in jury selection. Although Williams's counsel raised timely objections at trial, his appellate counsel failed to brief or argue either of these issues in the direct appeal.⁷ See Commonwealth v. Dudley, 96 Mass. App. Ct. 1114, at *2 (2019) (Unpublished Rule 1:28 Decision) (defendant waived argument regarding peremptory challenge by failing to raise it on appeal); Commonwealth v. LaChance, 469 Mass. 854, 857 (2014) (unpreserved claim of structural error arising from court room closure subject to doctrine of waiver). The sole issue

⁷ In his appellate brief, Williams presented the following issues for review:

1. Whether the 826 days which elapsed between Williams' arraignment and trial violated his speedy trial rights under Mass. R. Crim. P. 36, a question involving two issues of first impression:
 - a. whether a defendant's agreement that his case will "track" another pending, unrelated case in the same court under Superior Court Standing Order 2-86 does not, as a matter of law, constitute a per se waiver of the entire period of delay caused by the tracking case, and instead, whether delay during a co-tracking period is only attributable to the defendant under ordinary Rule 36 principles applied to the specific record of both cases during that period.
 - b. whether a period of delay caused by the litigation of a prosecutor's pretrial motion for a protective order is not an excluded period under Mass. R. Crim. P. 36(b)(2)(A)(v), where no case law supports this construction and where the Reporter's Notes expressly restrict this provision to "delay attributable to the securing of a judicial resolution of issues raised by a defendant's pretrial motions."
2. Whether the 826-day delay between arraignment and trial violated Williams' constitutionally-based speedy trial rights.

See Commonwealth v. Williams, Mass. Appeals Court, No. 2012-P-0307, Appellant's Brief, p. 1, 2012-WL 2924642 (Mass. App. Ct.) (Appellate Brief).

raised by appellate counsel was whether Williams's right to a speedy trial under Mass. R. Crim. P. 36 and the State and Federal constitutions had been violated.

“‘[A] motion for new trial may not be used as a vehicle to compel . . . review and [consideration of] questions of law;’ on which a defendant has had his day in an appellate court, or [on which he has] forgone that opportunity.” Commonwealth v. Watson, 409 Mass. 110, 112 (1991), quoting Commonwealth v. McLaughlin, 364 Mass. 221, 229 (1973). The rule of waiver “‘applies equally to constitutional claims which could have been raised, but were not raised, on direct appeal or in a prior motion for a new trial.” Id., quoting Commonwealth v. Decran, 97 Mass. 136, 139 (1986). And, it applies even if the defendant alleges, as Williams does here, that his appellate counsel’s failure to raise an issue amounted to ineffective assistance. See Commonwealth v. Kilburn, 438 Mass. 356, 360 (2003) (defendant cannot avoid consequence of waivers by claiming ineffective assistance of counsel since “every waived claim can be couched in ineffectiveness terms”).

While this court has the discretion to hear the waived claims, the Supreme Judicial Court (SJC) has recommended restricting the review of such claims “to those extraordinary cases where, upon sober reflection, it appears that a miscarriage of justice might otherwise result.” Watson, 409 Mass. at 112, quoting Commonwealth v. Harrington, 379 Mass. 446, 449 (1980). A waived claim is subject to a default “substantial risk of a miscarriage of justice” standard of review under which relief will still be granted if the court is left with “‘uncertainty that the defendant’s guilt has been fairly adjudicated.’” Commonwealth v. Randolph, 438 Mass. 290, 294-295 (2002), quoting Commonwealth v. Azar, 435 Mass. 675, 687 (2002). “Errors of this magnitude are extraordinary events and relief is seldom granted. . . .” Id. at 297. “In analyzing a claim under the substantial risk standard, ‘[w]e review the evidence and the case as a whole,’

and ask a series of four questions: (1) Was there error? (2) Was the defendant prejudiced by the error? (3) Considering the error in the context of the entire trial, would it be reasonable to conclude that the error materially influenced the verdict? (4) May we infer from the record that counsel's failure to object or raise a claim of error at an earlier date was not a reasonable tactical decision? Only if the answer to all four questions is 'yes' may we grant relief." *Id.* at 297-298, quoting and citing Azar, 435 Mass. at 682-684, 687-688 (internal citations to Azar and other cases omitted).

A. Conditions for Entry into the Court Room

Williams argues that his right to a public trial was violated when the trial judge granted the Commonwealth's request to impose conditions to entry into the court room. Williams contends that the conditions for entry resulted in a partial closure. He also argues that the conditions to entry were intimidating and more stringent than what the judge had ordered. The court is not persuaded.

Although Williams describes his argument as a "court room closure" issue, the court does not agree with this characterization. The SJC has consistently ruled that requiring spectators to produce identification in order to enter a court room does not constitute a closure in the constitutional sense and does not violate the right to a public trial under the Sixth Amendment. See Commonwealth v. Andrade, 488 Mass. 522, 541-542 (2021); Commonwealth v. Maldonado, 466 Mass. 751-752(2014). Instead, the issue is whether requiring spectators to provide identification and sign in before entering the court room was appropriate under the circumstances.

According to the record, on the first day of trial, the Commonwealth made an oral motion requesting that a court officer be placed outside of the court room to check identification and to

sign in people as they came in for the trial. The Commonwealth stated that the request was a safety precaution, citing concerns about witness intimidation that had been uncovered during the case. Tr. Vol. I, pp. 15-16. Defense counsel objected to the motion stating that she did not want her client's family members to be excluded from the court room if they could not produce a photo ID. Tr. Vol. I, pp. 16-17. Defense counsel also argued that there was no need to question anyone before entering the court room and that questioning would be intimidating. Tr. Vol. I, pp. 16-17. Defense counsel also suggested that the people that the Commonwealth was concerned about were in custody and that the only people she expected would attend the trial were her client's stepfather and mother. Tr. Vol. I, p. 17.

The trial judge granted the Commonwealth's request stating:

Based on the history of this case, based on what I find to be egregious witness intimidation, I'm going to grant the Commonwealth's request. The defendant has made affirmative steps to reach out to people on the other side to intimidate witnesses, and I'm not going to have that in my courtroom.

To the extent that there's a family member or someone who doesn't have a picture ID, I'd ask that defense counsel personally identify that person to the court officer . . . And then we'll allow them in . . . If the court is open, and if you're saying this issue regarding the possession of a picture ID is a problem, I'll address it and people will be allowed in with the representation by defense counsel that this person is who this person is.

Tr. Vol. I, pp. 17-18. Defense counsel responded, "If I know them, Judge. If I don't know them I certainly can't represent who they are;" Tr. Vol. I, p. 18. During empanelment, the Commonwealth also noted:

PROSECUTOR: And Your Honor, if I may put on the record, I know it's always your practice to do so, but just the fact that the courtroom has been open during this entire process and will continue to be open.

THE COURT: Since 2004.

Tr. Vol. I, p. 93.

The circumstances of this case are similar to Commonwealth v. Maldonado, in which the trial judge imposed identification and sign in as conditions of entry into the court room. 466 Mass. at 747. In Maldonado, the SJC recognized that such requirements could potentially result in some persons being unable to enter the court room because they did not have identification, and also recognized that others may choose not to enter the court room to avoid the need to identify themselves because they feared the attention of the police or immigration authorities, or because they wished to preserve their anonymity. Id. at 748. However, the SJC ultimately held that the conditions of signing in and showing identification were “modest” and “fell short of a constitutional closure.” Id. at 751.

The SJC further ruled that even modest conditions are subject to judicial review because there is a presumption of openness of court rooms even where the restriction falls short of a constitutional closure. Id. And, when requiring spectators to show identification, to overcome the presumption, the judge must set forth on the record the reasons that justify imposing the condition based on the special circumstances of the case and the conditions must not be broader than needed to accomplish their purpose. Id. In cases involving witness intimidation, there must be an articulable risk of witness intimidation or court room disruption that warrants the imposition of the identification condition. Id.

In this case, the trial judge stated that the reason for imposing the conditions on entry was “egregious witness intimidation” and “that the defendant has made affirmative steps to reach out

to people on the other side to intimidate witnesses, and I'm not going to have that in my courtroom." Tr. Vol. I, p. 17.

The judge's finding of "egregious witness intimidation" is supported by the record. At a motion hearing on April 8, 2011, the parties and the trial judge discussed recordings of telephone calls made by Williams from jail. In two of the phone calls, Williams, using an intermediary, contacted Smith to ask if he was going to come to court. Williams also made phone calls to other people as part of a plan to prevent Smith from coming to court. Tr. of 4/8/11 Motions Hearing, pp. 26-27. A Boston police detective, Sergeant Detective Joseph G. MacDonald ("Sgt. MacDonald"), also testified at the motion hearing that the Morris sisters reported that someone had broken into their apartment and that their car had been vandalized. Tr. of 4/8/11 Motions Hearing, pp. 51, 59-60. Sgt. MacDonald further testified that when he spoke with Stacy Morris about appearing in court, she told him that she was afraid of appearing in court, that her house had been broken into after she testified before the grand jury, and then her car had been vandalized, and that "she was absolutely petrified." Tr. of 4/8/11 Motions Hearing, pp. 50-51.

Williams contends that the facts of this case are distinguishable from Maldonado and are insufficient to justify the condition that spectators produce identification. He also argues that the Commonwealth's concerns about witness intimidation were unfounded because the acts against the Morris sisters could not be tied to Williams, and because any potential suspects had been identified and were in custody. The court does not agree. "A judge need not wait for a witness to be intimidated, the court room to be disrupted, or a specific threat before taking appropriate steps to address the risk of such misconduct." Maldonado, 466 Mass. at 753. This case, like Maldonado, involved a gang-related shooting where there is a risk that others associated with the gang may attempt to intimidate witnesses. Id. at 752. "Gauging the tension in a court room is

something that trial judges normally do . . . so we give deference to a trial judge's appraisal both of the air of tension and the dangers it posed." Id.

Williams also argues that the conditions to entry into the court room were intimidating and more stringent than what the judge had ordered because a Boston Police officer was taking names and comparing them to a list and a set of photographs. In support of this argument, Williams submitted affidavits from Michelle Galloway ("Galloway"), Okemia Credle ("Credle"), and Tonia Harris-Hughes ("Harris-Hughes"). These affidavits do not change the court's conclusion that the conditions to entry imposed by the trial judge were warranted and proper. Even if the court fully credits the affidavits, at best, they establish that officers were checking identification and requiring spectators to sign in before entering the court room. Despite Williams's suggestion, the affidavits do not state (and there is no other evidence) that the officers were using the photographs or a list of names to check the identification of individuals before they entered the courtroom.⁸ Ultimately, Galloway and Credle did not want to provide identification to the officers and they decided not to enter into the court room; Harris-Hughes provided identification, signed in, and attended the trial.

To summarize, following Maldonado and Andrade, the court concludes that requiring spectators to produce identification and sign in before entering the court room did not result in a court room closure.⁹ In addition, the court concludes that the imposed conditions were warranted security measures to prevent witness intimidation, and that they were no broader than needed to accomplish that purpose.

⁸ In her affidavit, Harris-Hughes states that she "was aware that a member of the Williams family, I believe Donald's mother Jeanette, had provided her personal information to the officer at the door and been told that she had a warrant and was therefore not allowed to enter the courtroom." This statement is inadmissible hearsay and, in any event, fails to establish that the officers were checking names against photographs and a list.

⁹ Williams argues that because the imposed conditions resulted in a partial court room closure, the court must analyze the issue using the four factors identified in Waller v. Georgia, 467 U.S. 39, 48 (1984). Having concluded that there was no closure, the court need not consider the Waller factors.

Having concluded that there was no closure, it follows that, applying the standard for waived claims, there was neither an error nor a substantial risk of a miscarriage of justice.

B. Peremptory Challenges

Next, Williams argues that the prosecutor impermissibly used peremptory challenges to exclude two Black women, potential Juror nos. 138 and 196, from the jury in violation of the Fourteenth Amendment and art. 12.

Rule 20(c) of the Massachusetts Rules of Criminal Procedure permits the Commonwealth and the defendant to exercise peremptory challenges to prevent venire members, declared indifferent by the judge, from being seated on the jury. “The essential nature of the peremptory challenge is that it is one exercised without a reason stated, without inquiry and without being subject to the court’s control.” Commonwealth v. Robertson, 480 Mass. 383, 390 (2018), quoting Swain v. Alabama, 380 U.S. 202, 220 (1965). “However, the equal protection clause of the Fourteenth Amendment to the United States Constitution and art. 12 of the Massachusetts Declaration of Rights place limitations on the use of peremptory challenges.” Id., citing Batson v. Kentucky, 476 U.S. 79, 106 (1986) and Commonwealth v. Soares, 377 Mass. 461, cert. denied, 444 U.S. 881 (1979).

“The use of peremptory challenges to exclude potential jurors solely because of their race is prohibited by the equal protection clause of the Fourteenth Amendment to the United States Constitution.” Commonwealth v. Grier, 490 Mass. 455, 458 (2022), citing Batson, 476 U.S. at 89. And, “[a]rticle 12 of the Massachusetts Declaration of Rights similarly proscribes the ‘use of peremptory challenges to exclude prospective jurors solely by virtue of their membership in, or affiliation with, particular, defined groupings in the community.’” Id., quoting Soares, 377 Mass. at 486. “Groups defined by race are among the particular or ‘discrete’ groups,

membership of which is an impermissible basis for peremptorily striking a potential juror under art. 12.” *Id.*, citing *Soares*, 377 Mass. at 488-489. Here, the defendant asserts that the defined group is Black women.

Under both Federal and Massachusetts law, a three-step framework, known as the *Batson-Soares* inquiry, guides the constitutional review of peremptory strikes. “First, the party opposing a peremptory strike must rebut the presumption that the strike is constitutionally proper by making out a prima facie case that the purpose for the strike is discriminatory. Second, if the judge finds that a prima facie case of discrimination has been established, the burden shifts to the party seeking to exercise the peremptory strike to provide a group-neutral explanation for the challenged strike. Third, the judge must then determine whether that explanation is genuine and adequate, or whether instead the opponent of the strike has proved a discriminatory purpose behind the strike.” *Grier*, 390 Mass. at 458.

In this case, the trial judge did not find a discriminatory pattern in the prosecutor’s peremptory challenges and, thus, did not require the prosecutor to state a reason for the challenge.

Williams’s argument consists of two parts: (1) the trial judge erred in ruling that the Williams failed to make out a prima facie case of discrimination when defense counsel objected to the Commonwealth’s challenge of Juror no. 196; and (2) consequently, the trial judge erred by failing to require the Commonwealth to state a group-neutral explanation for its challenge. As a practical matter, if the court concludes that the trial judge properly determined the first step of the *Batson-Soares* inquiry, it need not consider the second part of Williams’s argument.

“To make out a prima facie case for the first *Batson-Soares* step, a party opposing a peremptory strike must ‘show [] that the totality of the relevant facts gives rise to an inference of

a discriminatory purpose.” Grier, 390 Mass. at 459, quoting Johnson v. California, 545 U.S. 162, 168 (2005).¹⁰ “[T]he burden of making the requisite prima facie showing is ‘not . . . a terribly weighty one.’” Id. A prima facie case can be made upon a showing of a discriminatory purpose behind a single peremptory challenge. Id., citing Commonwealth v. Issa, 466 Mass. 1, 9, 10 (2013) (single peremptory challenge may be sufficient to rebut presumption where challenged juror is only member of protected class in entire venire).

“In assessing whether a party has met its burden under the first Batson-Soares step of showing a purpose to discriminate against a protected group in the use of peremptory strikes, a trial judge should consider ‘the totality of the relevant facts.’” Grier, 390 Mass. at 459, citing Sanchez, 485 Mass. at 511. The SJC has highlighted a number of factors to guide the court’s inquiry with respect to the first step:

- (1) “the number and percentage of group members who have been excluded”; (2) “the possibility of an objective group-neutral explanation for the strike or strikes”; (3) “any similarities between excluded jurors and those, not members of the allegedly targeted group, who have been struck”; (4) “differences among the various members of the allegedly targeted group who were struck”; (5) “whether those excluded are members of the same protected group as the defendant or the victim”; and (6) “the composition of the jurors already seated.”

Id. at 459-460, quoting Commonwealth v. Henderson, 486 Mass. 296, 311-312 (2020), quoting Commonwealth v. Jones, 477 Mass. 307, 322 (2017).

¹⁰ Under the standard applied at the time of trial, a party satisfied its burden of rebutting the presumption that a peremptory challenge was proper by showing: (1) a pattern of excluding members of a discrete group, and (2) it is likely that individuals are being excluded solely on the basis of their membership in that group. Commonwealth v. Scott, 463 Mass. 561, 570 (2012). In 2020, in Commonwealth v. Sanchez, the SJC adopted the language of the Federal standard for the first step, as stated in Batson v. Kentucky, under which “the presumption of propriety is rebutted when the totality of the relevant facts gives rise to the inference of discriminatory purpose” (quotation and citation omitted).” 485 Mass. 491, 511 (2020).

Williams argues that, in rejecting his Batson-Soares challenge, the trial judge relied exclusively on the fact that a Black woman had already been seated on the jury, and cites to the following exchange:

PROSECUTOR: Use a challenge, Your Honor.

DEFENSE COUNSEL: Your Honor, this is the second black female the Commonwealth has challenged. I think a Soares challenge at this point.

THE COURT: I don't find any pattern that would raise a concern. There have been other African-Americans or people of color selected to be on the jury.

DEFENSE COUNSEL: Judge, just for the record, I don't think that the test is whether or not there are other black jurors that were seated. I think it's whether or not the Commonwealth's challenges in and of themselves are race-based.

THE COURT: I'm aware of the legal standard, Ms. Scapicchio, and I know that one person can be a pattern, but I don't detect any pattern whatsoever. The last juror that was chosen was a black female. I don't find there to be any pattern.

DEFENSE COUNSEL: Just note my objection.

Tr. Vol. I, pp. 141-142. Williams's argument suggests that, by pointing out that Juror no. 196 was a Black woman, he has satisfied his burden under first step of the Batson-Soares analysis, and the trial judge should have proceeded to the second step. The court does not agree.

Although "a single peremptory challenge may be sufficient to rebut the presumption in cases, especially where 'the challenged juror is the only member of his or protected class in the entire venire,'" the circumstances of this case do not compel such a conclusion. See Issa, 466 Mass. at 9-10, quoting Commonwealth v. Prunty, 462 Mass. 295, 306 (2012). The record reflects that there were at least three Black women in the venire. In determining whether there was a pattern in the Commonwealth's challenges of Black female jurors, the trial judge could

also consider other relevant facts. Considering the totality of the relevant facts and guided by the factors highlighted by the SJC, the court concludes that the record supports the trial judge's determination that Williams failed to establish a prima facie case of discrimination.¹¹

With respect to the first factor, the number and percentage of group members who have been excluded, the relevant inquiry is whether a disproportionate number of potential jurors of a group were excluded over the entire course of the jury selection. Grier, 490 Mass. at 460. Here, the record shows that Commonwealth used four of its peremptory challenges to challenge Juror nos. 138, 163, 183, and 196. Juror nos. 138 and 196 were Black women, Juror no. 163 was a white woman, and Juror no. 196 was a white man. The trial judge also noted that the last juror seated, Juror no. 191, was a Black woman, and that there were other people of color seated on the jury. Williams has not provided any information regarding the racial or gender composition of the venire and the court cannot glean this information from the record. Without sufficient information, the court cannot assess whether a disproportionate number of Black female potential jurors were excluded from the jury.

With respect to the second factor, the record reveals a possible group-neutral explanation for the Commonwealth's challenges to Juror no. 138 and Juror no. 196. In her voir dire with the judge, Juror no. 138 revealed that, a year before the trial, her son had been prosecuted by the Suffolk County District Attorney's office for drug possession and he was convicted. The prosecutor expressed concern that Juror no. 138 could not be impartial because her son was prosecuted by the same district attorney's office and because Juror no. 138 had indicated on her juror questionnaire that she would rather not discuss the matter. Tr. Vol. 1, pp. 65-66, 69. This

¹¹The court reaches the same conclusion under the revised standard stated in Commonwealth v. Sanchez, 485 Mass. 491, 511 (2020).

concern is supported by the prosecutor's request that the judge excuse Juror no. 138 for cause, which the judge denied. Tr. Vol. 1, pp. 69-70.

The record also reflects that Juror no. 196 had a relative who may have been prosecuted by the Suffolk County District Attorney's Office. On her juror questionnaire, Juror no. 196 indicated that her brother had been charged with a crime. The prosecutor requested that the judge inquire about the brother because the prosecutor was familiar with the last name. Tr. Vol. 1, pp. 140-141. During her voir dire, Juror no. 196 disclosed that her brother was recently charged with domestic violence and that he had been in jail for much of his life. Tr. Vol. 1, pp. 140-141. As was the case with Juror no. 138, the Commonwealth could have been concerned that Juror no. 196 would not be impartial because her brother had been prosecuted by the same district attorney's office.¹²

With respect to the third factor, there are no discernible similarities between Juror nos. 138 (Black woman, age sixty-seven) and 196 (Black woman, age not indicated), and the other two potential jurors who were challenged by the Commonwealth, Juror nos. 163 (white woman, age twenty-three), and 183 (white man, age twenty). The court notes that defense counsel objected to the Commonwealth's challenge of Juror no. 183, arguing that the Commonwealth had challenged three jurors under the age of twenty-five.¹³ The trial judge determined that there was no pattern of discrimination and that age was not a protected group.

¹² The record reflects that two other potential jurors, Juror nos. 121 and 157, disclosed that they or their family members had been prosecuted for crimes. After Juror no. 121 revealed that he and his family members had been charged with various crimes, the judge excused him for cause. Juror no. 157 disclosed that her father had been prosecuted for a violent crime and further questioning revealed potential issues with Juror no. 157's ability to be fair and impartial. After a discussion with the parties, the judge excused Juror no. 157 for cause.

¹³ Defense counsel also objected to the Commonwealth's use of a peremptory strike on the basis of age and, in the context of the objection, incorrectly implicated Juror no. 138. Tr. Vol. 1, pp. 121-122. This other reference to Juror no. 138 does not affect the court's analysis of the issues raised in the Motion for New Trial.

With respect to the fourth factor, there are no discernable differences between Juror no. 138 and Juror no. 196. Both jurors were Black women, Juror no. 138 was sixty-seven years old, and Juror no. 196's age is unknown.

As to the fifth factor, Juror nos. 138 and 196 were not members of the same protected group as the defendant or the victim; Juror nos. 138 and 196 were Black women, Williams and Smith are Black men. Tr. Vol. 2, p. 56; Tr. Vol. 4, p. 107. Finally, turning to the sixth factor, the composition of the jurors already seated, the court has already determined that the record does not contain sufficient information regarding the racial or gender composition of the jury.

In sum, given that there is insufficient information regarding the composition of the venire and the jury, the apparent group-neutral basis for striking Juror nos. 139 and 196, and the fact that the excluded jurors, Williams, and Smith were not members of the same protected group, the court finds no error in the trial judge's determination that the defense had not established a prima facie case of discrimination.

Williams also argues that he suffers from ineffective assistance of appellate counsel because his appellate counsel failed to brief and argue this issue on appeal. In support of this argument, Williams submitted an affidavit from his appellate counsel. See Appendix to Defendant's Motion for New Trial, Affidavit of Wendy Sibbison ("Sibbison Affidavit"), p. 12. In the affidavit, appellate counsel states that she has no memory of a Batson-Soares issue or why she did not brief it. See Sibbison Affidavit, ¶ 3.

The standard to determine if appellate counsel deprived the defendant of his right to effective assistance of counsel is "whether that performance fell 'measurably below that which might be expected from an ordinary fallible lawyer,' and 'whether it has likely deprived the defendant of an otherwise available, substantial ground of defence.'" Commonwealth v. Pilalas,

102 Mass. App. Ct. 1120 at *3 (2023), quoting Commonwealth v. Saferian, 366 Mass. 89, 96 (1974). In applying this standard, the court focuses on “whether appellate counsel “failed to raise a significant and obvious issue . . . which . . . may have resulted in a reversal of the conviction, or an order for a new trial.”” Id., quoting Commonwealth v. Aspen, 85 Mass. App. Ct. 278, 282 (2014).

Having concluded that there was no error in the trial judge’s rulings on the Commonwealth’s peremptory challenges, it follows that Williams was not deprived of a substantial ground of defense which may have resulted in a different outcome at trial. In addition, there is nothing in the record or in the Sibbison Affidavit from which the court could infer that appellate counsel’s failure to raise the peremptory challenge argument in the direct appeal was not a reasonable tactical decision. For all of these reasons, the court concludes that there was no substantial risk of a miscarriage of justice.

II. Newly Available Evidence

Finally, Williams argues that a new trial is warranted because of newly available evidence. The “newly available evidence” consists of proffered statements contained in the Memogne Lamothe Affidavit in Support of Defendant’s Motion for New Trial (the “Lamothe Affidavit”) and the Affidavit of Michael Florence in Support of Defendant’s Motion for New Trial (the “Florence Affidavit”).

In the Lamothe Affidavit, Lamothe states that, on November 23 to November 24, 2007, he was not at Florence’s house and that he did not drive anyone to another location on those days. He also states that, during that time period, he was staying at the Roadhouse Suites and that he remained there until he checked out on November 24. The Lamothe Affidavit is undated.

In the Florence Affidavit, Florence states that, on November 23-24, 2007, he was not in Massachusetts. He states that, at that time, he was in North Carolina visiting his child's mother. He further states that he arrived in North Carolina on November 21, 2007, and that he stayed there for a week. He also states that it is "untrue" that "there was supposed to be a hang out with some of my friends including Tremane [sic] Smith at my house, prior to being shot." The Florence Affidavit is dated May 1, 2021.

"In a motion for a new trial based on new evidence, the defendant must show that the evidence is either 'newly discovered' or 'newly available' and that it 'casts a real doubt' on the justice of the defendant's conviction." Commonwealth v. Gibson, 489 Mass. 37, 51 (2022), quoting Commonwealth v. Sullivan, 469 Mass. 340, 350 (2014); see Commonwealth v. Cintron, 435 Mass. 509, 516 (2001), overruled on other grounds by Commonwealth v. Hart, 455 Mass. 230, 241 (2009) (standard applied to motion for new trial based on newly available evidence is same as applied to one based on newly discovered evidence). "A defendant must demonstrate that the evidence is (1) newly discovered (or newly available) and (2) credible and material and that (3) the evidence casts real doubt on the justice of the conviction." See Gibson, 489 Mass. at 51, citing Commonwealth v. Teixeira, 486 Mass. 617, 640 (2021). "The inquiry is not 'whether the verdict would have been different, but rather whether the new evidence would probably have been a real factor in the jury's deliberations.'" Gibson, 489 Mass. at 51-52, quoting Commonwealth v. Cameron, 473 Mass. 100, 105 (2015).

Although the SJC has not recognized a distinct category of "newly available" evidence, the SJC has suggested that evidence that was not available at trial because a witness asserted a Fifth Amendment privilege, but which later becomes available, can provide a basis for a decision to grant a new trial. See Commonwealth v. McGee, 467 Mass. 141 (2014), citing

Commonwealth v. Evans, 439 Mass. 184, 203, cert. denied, 540 U.S. 923 and 540 U.S. 973 (2003) and Cintrón, 435 Mass. at 516. However, “[e]xculpatory statements of a witness who previously had invoked his or her Fifth Amendment privilege do not constitute ‘newly discovered’ or ‘newly available’ evidence where a defendant was aware of the content of the statements at the time of trial.” McGee, 467 Mass. at 148, citing Evans, 439 Mass. at 203 and Commonwealth v. Wolinski, 431 Mass. 228, 237 (2000).

Here, at the time of trial, Williams was aware of the content of the now-proffered testimony of Lamothe and Florence. In the Motion for New Trial, Williams acknowledges that his trial counsel told the court that “Lamothe . . . was actually an overnight guest at [the Roadhouse Suites] the night of this incident.” Tr. Vol. VI, pp. 103-104. He also acknowledges that his trial counsel informed the court that “Florence has already told the Commonwealth that despite the fact that Mr. Smith said he was here during this time he was actually in North Carolina. He provided them the bus company that he was on. He provided the name of the person that he was with in North Carolina.” Tr. Vol. IV, p. 15. Since Williams’s trial counsel was aware that both Lamothe and Florence would testify that they were not at Florence’s house or at the scene of the incident on November 23-24, 2007, their expected testimony is not “newly available.”

Even if the court were to accept that the proffered testimony is “newly available” evidence, the testimony would not “cast[] real doubt on the justice of the conviction.” See Gibson, 489 Mass. at 51. When considering newly available evidence, “[t]he inquiry is not ‘whether the verdict would have been different, but rather whether the new evidence would probably have been a real factor in the jury’s deliberations.’” Id. at 51-52, quoting Cameron, 473 Mass. at 105.

Here, the Commonwealth's case relied on Smith's identification of Williams as the shooter. Although Smith's descriptions were inconsistent with respect to who was present at Florence's house and who was in which car on the night he was shot, he never wavered on his identification of Williams as the shooter. At trial, Smith testified that he saw Williams shoot him multiple times. Tr. Vol 2, pp. 173-175. And, when he thought he was dying, Smith "chirped" Stephanie Morris's phone and said, "Man shot me, my own man shot me," Tr. Vol. 4, p. 143, he told officers that "Man did it, Man did it," Tr. Vol. 4, p. 149, and he told Officer Egan that "Donald Williams" shot him, Tr. Vol 4, pp. 75-76. Further, on December 15, 2007, Smith picked out Williams's picture from a photo array and said, "That's him. Donald Williams. I'm a million percent sure He shot me." Tr. Vol. 4, pp. 187, 189. After he was released from the hospital, Smith spoke with the police on several occasions and told them that "Mann" or "Donald," meaning Williams, shot him. Tr. Vol. 3, pp. 39, 40.

Williams would have used the proffered testimony of Lamothe and Florence to impeach Smith by contradicting his testimony regarding the gathering at Florence's house; specifically, who was there, and who was in which of the two cars. William's trial counsel introduced substantial impeachment evidence on these issues. On cross-examination, defense counsel elicited testimony from Smith that highlighted the inconsistencies between his initial statement to the police and his grand jury testimony regarding who was present at Florence's house and who was in which car. "Newly discovered evidence that tends to merely impeach the testimony of a witness does not ordinarily warrant a new trial." McGee, 467 Mass. at 150, quoting Commonwealth v. Simmons, 417 Mass. 70, 72 (1994).

In addition, the proffered testimony would be cumulative because defense counsel also introduced business records from the Roundhouse Suites and from Greyhound, which were

consistent with the defense's theory that Lamothe and Florence were not with Smith on November 23-24, 2007. "Cumulative evidence carries less weight than new evidence different in kind." McGee, 467 Mass. at 149, quoting Cintron, 435 Mass. at 518. Finally, even if the court assumes that a jury would find their testimony credible, at best, testimony from Lamothe and Florence would establish that they were not present on November 23-24, but their testimony would not exculpate Williams. Under the circumstances, there is "no substantial risk that a jury would reach a different conclusion if presented with the newly available evidence." Cintron, 435 Mass. at 516.

In sum, the Motion for New Trial and the materials submitted in support of Williams's arguments do not cast doubt on the issues; therefore, the court will deny the Motion for New Trial without an evidentiary hearing.

CONCLUSION AND ORDER

For the reasons explained above, it is hereby **ORDERED** that Williams's Motion for New Trial (Paper No. 106) is **DENIED**.

SO ORDERED.

Date: January 31, 2025


Kathleen M. McCarthy-Neyman
Justice of the Superior Court