

S.J.C. No. DAR-____
App. Ct. Nos. 25-P-1560 & 25-P-1561

Commonwealth of Massachusetts
Supreme Judicial Court

COMMONWEALTH,

Appellee,

vs.

JONATHAN JIRONVIL & LUCNALIE JIRONVIL,

Defendants-Appellants.

ON APPEAL FROM JUDGMENTS OF
THE PLYMOUTH COUNTY SUPERIOR COURT

APPLICATION FOR DIRECT APPELLATE REVIEW

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December 24, 2025

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REQUEST FOR DIRECT APPELLATE REVIEW

These appeals present questions of first impression regarding the enabling statute for the Massachusetts Department of Transportation (MassDOT)'s "E-ZPass" electronic highway toll collection program, G.L. c.6C, §13(a). That statute provides that E-ZPass data must remain confidential and may only be used for purposes of toll collection. Although no appellate decision has ever construed this statutory provision, this Court has assumed that an analogous New Hampshire statute "creates an evidentiary privilege in E-ZPass data." *Commonwealth v. Fitzpatrick*, 463 Mass. 581, 599-600 (2012).

In this case, the defendants contend that the Commonwealth violated both the statute's confidentiality provision and its use provision by obtaining E-ZPass data through a grand jury subpoena rather than a warrant supported by probable cause, and then using that data both in a subsequent search warrant application and as evidence at trial. The judge below concluded that no suppression remedy was available without directly acknowledging the statute's prohibition of any "use" of E-ZPass data except for purposes of toll collection.

Pursuant to Mass. R.A.P. II, the defendants now request that this Court allow direct appellate review and hold that the statute means what it says: E-ZPass data "shall be used for enforcement purposes only with respect to toll collection regulations," and not in a search warrant application or as trial evidence for the enforcement of other provisions. Even if this Court disagrees with that construction of the statute's "use" provision, it should still hold that §13(a)'s unqualified confidentiality provision vests account holders with a reasonable expectation of privacy that cannot be pierced without a warrant.

PRIOR PROCEEDINGS

These are consolidated appeals from Jonathan and Lucnalie Jironvil's convictions of arson and related offenses at a joint trial, and from the denial of their motions for new trial (also heard jointly).

The defendants were indicted by a Plymouth County grand jury on January 22, 2020, on charges of arson; malicious destruction of property; and three counts of assault with intent to murder. The indictments were tried to a jury (Sullivan, J., presiding) beginning on May 22, 2023. After initially deadlocking, the jury eventually returned guilty verdicts on June 2, 2023. Each defendant was sentenced to a term of eight to ten years in state prison, and both defendants timely noticed their appeals.

The direct appeals were stayed pending litigation of motions for new trial, which were filed on October 24, 2024. The trial judge held an evidentiary hearing on the motions across five nonconsecutive days in June and July of 2025. On August 21, 2025, the judge issued a consolidated memorandum and order denying both motions. The defendants filed timely notices of appeal of that order, and those appeals were subsequently consolidated with the direct appeals.

STATEMENT OF RELEVANT FACTS

Siblings Jonathan and Lucnalie Jironvil have been convicted of arson and attempted murder in connection with a fire at their former foster mother's house in Brockton. The case against them was circumstantial and the jury struggled to return a verdict, initially declaring themselves deadlocked before eventually returning convictions.

The Commonwealth's theory was that the arson was motivated by a custody dispute over the Jironvils' younger sister. At trial,

evidence regarding that dispute was abundant, but evidence that the Jironvils had intentionally set the fire was slim. Essentially, it had three components: (1) surveillance footage showing two unidentifiable people running away from the house as the fire began; (2) a State Police trooper's opinion testimony, based upon that video and his failure to discern any accidental cause for the fire, that the fire had been intentionally set; and (3) location data from the Jironvils' cellphones and E-ZPass account that the Commonwealth contended showed they had driven to Brockton on the night of the fire. This application for direct appellate review focuses on the admissibility of that location data, which was challenged in a postconviction motion for new trial. The facts of the case are set forth in greater detail in the judge's order on the motion for new trial, *post*, at 45-63.

The fire occurred in the early morning hours of July 18, 2019. The trooper testified at trial that he inspected the scene of the fire that day, and initially classified its cause as "undetermined." Around a week later, he gained access to the security footage and changed his conclusion to "incendiary," *i.e.*, intentionally set.

The trooper's changed conclusion sparked a grand jury investigation. On July 29, the Commonwealth issued a grand jury subpoena to MassDOT seeking "any photo data and gantry hit data" for the Jironvils' E-ZPass account for the week of July 11-18. MassDOT informed the Commonwealth that its policy was to notify account holders before providing records in response to a subpoena unless the subpoena was accompanied by a court order instructing them not to do so. The trial prosecutor then filed a motion for such a court order, which was allowed on August 13, 2019.

The following week, MassDOT produced records showing that a car registered to Lucnalie had traveled east on the Mass Pike the night before the fire, and back west the next morning. The Commonwealth contended at trial that the E-ZPass records were consistent with Lucnalie having driven the night before the fire from her home in Amherst to Jonathan's home in Worcester, and then to Brockton; and then having returned home (again via Worcester) the next day.

Lucnalie had previously told investigators that she was home asleep on the night of the fire and that she hadn't allowed anyone else to use her car that night. After receiving the E-ZPass records, the Commonwealth leveraged their apparent inconsistency with Lucnalie's statements to obtain search warrants for cell site location information (CSLI) from both Jironvils' cellphones. T-Mobile provided data in response to those warrants that the Commonwealth contended at trial was also consistent with both Jironvils' cellphones having been in Brockton around the time of the fire.

ISSUES PRESENTED

The Jironvils' motions for new trial presented several substantial issues, including the Commonwealth's failure to disclose exculpatory evidence; ineffective assistance of counsel in addressing the expert testimony regarding causation of the fire; and jury empanelment using an improper commitment question in violation of *Commonwealth v. Montgomery*, 495 Mass. 238 (2025). Notably, the trial judge found merit in each of those claims, denying the motions for new trial solely based on his determination that no substantial prejudice resulted from any of these three constitutional errors. *See post*, at 78-104.

The Jironvils continue to press those claims on appeal. But as noted, this application for direct appellate review focuses on a novel claim which, if correct, cannot possibly be nonprejudicial: that the location data that allegedly connected the Jironvils to the fire should never have been admitted because MassDOT's enabling statute forbids using E-ZPass data for the enforcement of laws other than toll collection regulations, and concomitantly vests account holders with a reasonable expectation of privacy in their account data (rendering its warrantless acquisition unconstitutional).

Trial counsel did not move to suppress the location data. But the issue is properly before this Court based on the Jironvils' postconviction claim that the failure to do so constituted ineffective assistance of counsel in violation of the Sixth Amendment and art. 12. Counsel testified below that they would have moved to suppress the location data had they perceived any legal basis to do so. The trial judge appears generally to have credited their testimony; he disposed of this claim based solely on his legal conclusion that a motion to suppress would not have been successful if filed. *See post*, at 81-85.

ARGUMENT

The convictions should be reversed because trial counsel ineffectively failed to file meritorious motions to suppress the electronic location data that allegedly connected the defendants to the crime.

A failure to file a viable motion to suppress constitutes ineffective assistance of counsel under the Sixth Amendment and art. 12. *See Commonwealth v. Comita*, 441 Mass. 86, 90 (2004), *citing Kimmelman v. Morrison*, 477 U.S. 365, 382-383 (1986). Here, the Jironvils' trial counsel failed to file any pretrial motions to suppress or exclude evidence. Had they done so, the location data essential to the Commonwealth's

case could have been excluded, leading to a strong likelihood of a different result at trial.

As noted, MassDOT produced E-ZPass records pursuant to a grand jury subpoena and a court order directing it to comply with the subpoena without notifying the Jironvils. The Commonwealth's motion for the court order did not purport to establish probable cause that the E-ZPass records would produce evidence of a crime, and the Commonwealth never contended during the Rule 30 litigation that probable cause existed at that time. These records should not have been produced absent a warrant supported by probable cause, and should have been excluded or suppressed on a proper motion. In addition, the Commonwealth has similarly never contended that the affidavits in support of the CSLI warrants established probable cause without the E-ZPass data. Thus, a successful motion to suppress that data would also have led to the suppression of the CSLI.

A. MassDOT's enabling statute forbids the disclosure or use of E-ZPass records for purposes other than toll collection.

MassDOT's authority to collect tolls electronically on the Mass Pike derives from G.L. c.6C, §13(a). After delegating that statutory authority, §13(a) provides that:

The department shall maintain the confidentiality of all information ... relative to account holders who participate in its electronic toll collection system. Such information shall not be a public record ... and shall be used for enforcement purposes only with respect to toll collection regulations.

By its plain terms, this statute forbade MassDOT to disclose the Jironvils' E-ZPass data, and also forbade the Commonwealth to "use" that data for the "enforcement" of non-toll-related laws by including it in a search warrant application or admitting it in evidence at trial.

The judge below said that “nothing in the MassDOT statute ... mandates suppression as a remedy for a *confidentiality* violation.” *Post*, at 83 (emphasis added). But he did not address the statute’s *use* provision, or explain why including E-ZPass data in a search warrant application and admitting it as substantive evidence of guilt at trial would not constitute a prohibited “use” of that data “for enforcement purposes” unrelated to toll collection regulations. G.L. c.6C, §13(a).

Instead, the judge simply asserted that MassDOT’s production of the data complied with the Fair Information Practices Act (FIPA). *Post*, at 82-83, *citing* G.L. c.66A, §2(k), *and* 801 Code Mass. Regs. §3.03. Even if that is correct, it is totally unresponsive to the Jironvils’ claim that the production and use of their E-ZPass data violated MassDOT’s enabling act. FIPA applies generally to all “personal data” within the control of any State agency, and forbids agencies to release that data without following specific procedures, including prior notice to the data subject before compliance with a subpoena. *See* G.L. c.66A, §2(k). But the Jironvils’ claim is that the dissemination of the data at issue here was prohibited not by FIPA, but by G.L. c.6C, §13(a), which provides specific directives about the confidentiality and permissible uses of E-ZPass records in particular. *See generally Monell v. Boston Pads, LLC*, 471 Mass. 566, 577 (2015) (discussing “the familiar canon of construction providing that a specific statute ... controls over the provisions of a general statute”). Notably, that statute contains a sweeping and unqualified guarantee of confidentiality, with no provision for that protection to be overridden under any circumstances. *Contrast, e.g.,* G.L. c.161A, §5(s) (permitting dissemination of otherwise confidential MBTA fare collection data pursuant to a warrant or in exigent

circumstances).¹ *Cf. also, e.g.*, G.L. c.119, §51E (protecting confidentiality of reports of injured children except with “the written and informed consent of the child’s parent or guardian, the written approval of the commissioner, or an order of a court of competent jurisdiction”).

The judge did not attempt to explain how the general regulations promulgated pursuant to FIPA could authorize the disclosure or use of information made confidential by another specific statute. They cannot. In fact, the regulations cited by the judge expressly provide that “[n]othing [therein] shall be construed as authorizing the holder to release information, the disclosure of which is prohibited by any statute other than G.L. c.66A.” 801 Code Mass. Regs. §3.03. The judge erred by disregarding this clear statement and treating these regulations as though they authorized dissemination of E-ZPass data in contravention of the clear and unambiguous language of G.L. c.6C, §13(a).

B. Because MassDOT’s enabling statute vests account holders with a reasonable expectation of privacy in their electronic toll collection data, the warrantless acquisition of the Jironvils’ E-ZPass data was unconstitutional.

In addition to the breach of statutory confidentiality, the production of the E-ZPass records also violated the Jironvils’ Fourth Amendment and art. 14 rights. Under those provisions, “governmental conduct that invades reasonable expectations of privacy is ordinarily not permitted without a warrant, regardless of how such an invasion takes place.” *Commonwealth v. Almonor*, 482 Mass. 35, 48 n.15 (2019). The

¹ The clear parallel between this provision in the MBTA’s enabling act and the portion of MassDOT’s enabling act here at issue strongly suggests the Legislature’s recognition that absent this exception, the statutory language would *not* permit the agency to disclose the relevant data to law enforcement.

Commonwealth's warrantless acquisition of the E-ZPass data thus was unconstitutional so long as it was objectively reasonable for the Jironvils to expect that data to remain private. See *Commonwealth v. Gosselin*, 486 Mass. 256, 262-263 (2020) (analyzing whether defendant had reasonable expectation of privacy in records obtained through grand jury subpoena). It was.

"Clearly, tracking a person's movements implicates privacy concerns." *Commonwealth v. Augustine*, 467 Mass. 230, 246 (2014). This Court thus has held that as a general matter, "it is objectively reasonable for individuals to expect to be free from sustained electronic monitoring of their public movements." *Commonwealth v. Henley*, 488 Mass. 95, 108 (2021), quoting *Commonwealth v. McCarthy*, 484 Mass. 493, 503 (2020). Whether a particular governmental surveillance technique violates that reasonable expectation of privacy depends in part upon "precisely how detailed a picture of the defendant's movements" it reveals. *McCarthy*, 484 Mass. at 509.

The intrusion in this case was accomplished by a subpoena for more than a week's worth of data from twenty-six "tolling locations" capable of tracking (and photographing) every vehicle traveling anywhere on the Mass Pike in either direction, twenty-four hours a day. The Jironvils argued below that this constituted a constitutionally cognizable privacy invasion on its own. But they also contended that regardless of whether that was so, the unqualified statutory guarantee of confidentiality vested them with an objectively reasonable expectation that their E-ZPass data would remain private.

The judge rejected the first claim and totally ignored the second. This was error. Even in the *absence* of a statutory confidentiality

provision, this Court has held it “reasonable to expect that a government agency, to which a citizen is required to submit certain materials, will use those materials solely for the purposes intended and not disclose them to others in ways that are unconnected with those intended purposes.” *Commonwealth v. Yusuf*, 488 Mass. 379, 395 (2021), quoting *Commonwealth v. Buccella*, 434 Mass. 473, 485 (2001). Thus, in *Buccella*, this Court concluded that a student likely had a reasonable expectation of privacy in the schoolwork he handed in to his teachers, even though those “records are not literally privileged.” *Buccella*, 434 Mass. at 485. That logic applies with much greater force here, given that the data at issue is not only collected for the limited purpose of toll enforcement but that disclosure or use of that data for other purposes is expressly forbidden by statute. See G.L. c.6C, §13(a).

The judge’s reliance on *Henley*, 488 Mass. at 113-114, for a contrary conclusion, *post*, at 85, was misplaced. For one thing, in *Henley*, police obtained only “two isolated days” of MBTA fare collection data, *id.* at 113, as compared with an entire week’s worth of toll collection data in this case. But more importantly, the query in *Henley* was conducted prior to the Legislature’s 2021 enactment of G.L. c.161A, §5(s). Similarly to c.6C, §13(a), that statute now requires the MBTA to “maintain the confidentiality of all such information” and use it “for fare collection purposes only.” G.L. c.161A, §5(s). But at the time police requested the fare collection data at issue in *Henley*, the MBTA’s enabling act was silent on the permissible uses of fare collection data. This Court’s analysis thus was conducted in light of the MBTA’s 2015 privacy policy, which provided that fare information would be “provide[d ...] to law enforcement when requested.” *Henley*, 488 Mass. at 106. Plainly, the

Legislature’s subsequent instruction that MBTA fare collection data may only be produced pursuant to a warrant or in exigent circumstances alters the objective reasonableness of an expectation that the data will not be (unlawfully) produced under *other* circumstances. By the same token, the similar—but notably *unqualified*—confidentiality provision in c.6C, §13(a), renders an E-ZPass account holder’s expectation that their account data will remain private indisputably reasonable. *Compare Commonwealth v. Zachary Z.*, 462 Mass. 319, 323 (2012) (expectation of privacy likely reasonable if information is part of “confidential ‘student record’ under State and Federal education regulations”), *with Commonwealth v. Johnson*, 481 Mass. 710, 722-723 (2019) (no reasonable expectation of privacy where “statute ... provides an express, and apparently unlimited, authorization for law enforcement to review probation records”).

This is especially so because the legislative purpose underlying that provision is congruent with the relevant constitutional interests. It reflects an apparent legislative recognition that establishing an electronic toll collection system would create a trove of privacy-invasive data unlike anything that previously had existed, and a concomitant legislative judgment that any such system should be conditioned on a guarantee that the government would not use that data to invade its citizens’ privacy—and indeed, would use it *at all* “only with respect to toll collection.” G.L. c.6C, §13(a). This lines up neatly with the “overarching goal” of this Court’s constitutional privacy jurisprudence, which “is to ‘assure the preservation of that degree of privacy against government that existed when the Fourth Amendment and art. 14 were adopted.’” *McCarthy*, 484 Mass. at 498.

In sum, the inherently privacy-invasive nature of the trove of location data maintained by MassDOT, combined with the statutory guarantee that the data would remain confidential and not be used except for toll enforcement, rendered the Jironvils' expectation of privacy in that data objectively reasonable. The Commonwealth's acquisition of that data without a warrant thus violated their rights under the Fourth Amendment and art. 14.

C. All of the location data admitted at trial should have been excluded as fruits of the Commonwealth's unlawful acquisition and use of the Jironvils' E-ZPass records.

As noted, the Commonwealth has never claimed that there was probable cause to connect the Jironvils to the fire prior to the production of the E-ZPass records. Thus, although the Commonwealth did obtain a court order for MassDOT to produce the records without prior notice to the Jironvils, that court order was not supported by a judicial finding of probable cause; consequently, it was constitutionally insufficient to breach the Jironvils' reasonable expectation of privacy in their confidential location data. In addition, since the showing of probable cause for the CSLI warrants relied on the inconsistency between the E-ZPass records and Lucnalie's statements to police, those warrants were also tainted by the prior illegality. *See generally Commonwealth v. Pearson*, 486 Mass. 809, 813-816 (2021). Both the CSLI and the E-ZPass data should have been excluded at trial.

REASONS FOR DIRECT APPELLATE REVIEW

This appeal presents statutory and constitutional "questions of first impression" that are "of such public interest that justice requires a final determination by [this] Court." Mass. R.A.P. 11(a). As noted, the

statutory provision relied upon by the Jironvils has never previously been construed by any appellate court. Nor has this Court had an opportunity to examine the effect of the parallel statute restricting the dissemination and use of MBTA fare collection data on its holding in *Henley, supra*, that such data may be obtained without a warrant.

As explained above, the plain statutory language appears unambiguously to prohibit the dissemination and use of the Jironvils' E-ZPass records that occurred here. Certainly, neither the Commonwealth nor the judge below ever articulated a construction of the statute that would give effect to its plain language while also permitting the Commonwealth's conduct in this case. Nevertheless, MassDOT's response to the subpoena strongly suggests that it regularly provides such data, in apparent violation of the terms of its own enabling statute. This Court's intervention is required.

CONCLUSION

For the reasons explained above, Jonathan and Lucnalie Jironvil respectfully request that direct appellate review be allowed.

Respectfully submitted,

/s/ David M. Osborne

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Certificate of Compliance

I hereby certify that this application for direct appellate review complies with Mass. R.A.P. 11 and 20(a). The application is set in 14-point Athelas font and its argument section contains 1,999 words, as determined by using the “Word Count” feature in Microsoft Word for Office 365.

/s/ Patrick Levin

Patrick Levin

Certificate of Service

I hereby certify that in the matter of Commonwealth *vs.* Jonathan Jironvil & Lucnalie Jironvil, S.J.C. No. DAR-____, Appeals Court Nos. 25-P-1560 & 25-P-1561, I have today served the Application for Direct Appellate Review of Defendants-Appellants Jonathan and Lucnalie Jironvil on the Commonwealth by directing a copy through the electronic filing service provider to:

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December 24, 2025

- Case Type: Indictment
- Case Status: Open
- File Date: 01/22/2020
- DCM Track: B - Complex
- Initiating Action: ARSON OF DWELLING HOUSE c266 §1
- Status Date: 02/24/2020
- Case Judge:
- Next Event:

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

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
01/22/2020	Indictment(s) returned	1	
01/23/2020	Commonwealth 's Motion to amend indictments against Jonathan Jironvil and Lucnalie Jironvil	2	
01/23/2020	Commonwealth 's Motion to amend the indictments against Jonathan Jironvil and Lucnalie Jironvil; This matter came before the Court on January 23,2020 for hearing on motion to amend copies mailed Jan 24,2020 Judge: Kelley, Hon. Angel	3	 
02/24/2020	Attorney appearance On this date Alexander C Zane, Esq. added as Attorney for the Commonwealth for Prosecutor Plymouth County District Attorney		
02/24/2020	Defendant arraigned before Court.		
02/24/2020	Plea of not guilty entered on all charges.		
02/24/2020	Released on Personal Recognizance		
02/24/2020	Bail warnings read		
02/24/2020	Commonwealth 's Motion To Admit Brockton Juvenile Court Docket Sheet Of All Dates Regarding The Petition For Guardianship RE: Minor Jironvil	4	
02/24/2020	Commonwealth 's Motion in limine To Admit Opinion Testimony From MA State Trooper David Crouse	5	
02/24/2020	Commonwealth 's Motion in limine To Admit Statements Made By Jonathan Jironvil At The Brockton Juvenile court Guardianship Hearing	6	
02/24/2020	Commonwealth 's Motion in limine To Admit In-Court Identification Pursuant To Commonwealth v. Crayton	7	
02/24/2020	Commonwealth 's Motion To Admit Electronic Call Logs of Jonathan and Lucnalie Jironvil At Trial	8	
02/24/2020	Commonwealth 's Motion in limine To Admit Evidence Of The Protracted Custody Dispute Regarding Minor Jironvil Sibling	9	
02/24/2020	Commonwealth 's Motion For Court Order To Limit The Discovery Of Minor Child's DCF Group Home Address	10	
02/24/2020	Finding and Order on Bail: Judge: Kelley, Hon. Angel	11	
02/24/2020	Case continued until 3/16/20 for PTC and conditions of release. (Kelley,J)(FTR)		
02/25/2020	Sent to Registry of Motor Vehicles, Department of Revenue and Department of Transitional Assistance:	12	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Notice of Unpaid Legal Counsel Fees Sent On: 02/25/2020 10:44:31		
02/25/2020	Case assigned to: DCM Track B - Complex was added on 02/25/2020	13	
03/16/2020	Event Result:: Conference to Review Status scheduled on: 03/16/2020 09:00 AM Has been: Rescheduled For the following reason: Court Closure Hon. Angel Kelley, Presiding		
04/27/2020	Event Result:: Conference to Review Status scheduled on: 04/29/2020 09:00 AM Has been: Not Held For the following reason: By Court due to Covid-19 Hon. Mark Gildea, Presiding		
06/23/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Conference to Review Status scheduled on: 06/26/2020 09:00 AM Has been: Rescheduled-Covid-19 emergency Hon. Angel Kelley, Presiding		
08/24/2020	Case continued to September 29,2020 for further pre trial conference, defendant's presence waived (Cosgrove,J) FTR		
08/24/2020	Attorney appearance On this date Robert B Christian, Esq. added as Appointed - Indigent Defendant for Defendant Jonathan Jironvil for the purposes of case in chief	14	 Image
08/24/2020	Endorsement on Motion for court order to limit discovery of minor child's DCF group home address, (#10.0): ALLOWED (Cosgrove,J) Judge: Cosgrove, Hon. Robert C		
08/24/2020	ORDER: protective order ; Wherefore, I Order that the address and the name of the group home which could be used to locate said minor child may be withheld by the commonwealth and that access to the location of the group home are to be restricted to the defense attorney alone, pending further order of the court. I direct that the commonwealth upon request, provide the defense attorneys and an investigator with a reasonable opportunity to request an interview with the witnesses, by telephone or in person, at the district attorney's office in Brockton, at a time mutually convenient for the parties. (Cosgrove,J)	15	 Image
08/24/2020	Defendant 's Motion for funds for forensic electronic expert filed; ALLOWED not to exceed \$3,500.00 (Cosgrove,J) Judge: Cosgrove, Hon. Robert C	16	
09/28/2020	Event Result:: Pre-Trial Conference scheduled on: 09/29/2020 09:00 AM Has been: Rescheduled For the following reason: Request of Commonwealth Hon. Robert C Cosgrove, Presiding		
10/20/2020	Event Result:: Pre-Trial Conference scheduled on: 10/22/2020 09:00 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Angel Kelley, Presiding		
11/20/2020	Defendant 's Motion for funds for investigator; Filed and Allowed copies sent Nov 20,2020	17	 Image
11/20/2020	Case continued to February 9,2021 by agreement for discovery compliance FTR		
02/09/2021	Oral motion to continue allowed. Case continued until 3/18 for hearing on compliance (Sullivan,J)(FTR)		
03/16/2021	Event Result:: Hearing on Compliance scheduled on: 03/16/2021 09:00 AM Has been: Not Held For the following reason: Request of Defendant Hon. William F Sullivan, Presiding		
03/18/2021	ADA Zane and Atty. Christian present in court. After hearing, case continued by agreement to April 22, 2021 at 9:00 a.m. for status. Defendant's presence is waived. FTR (J. Sullivan)		
04/22/2021	Event Result:: Conference to Review Status scheduled on: 04/22/2021 09:00 AM Has been: Rescheduled For the following reason: Commonwealth failed to appear Hon. Angel Kelley, Presiding		
04/22/2021	Defendant 's Motion for funds for Fire Investigation/Arson Expert	18	
04/23/2021	Event Result:: Conference to Review Status scheduled on: 04/23/2021 09:00 AM		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Has been: Held as Scheduled. Defendant presence waived. After hearing, case continued to June 14, 2021 at 9am for status of records subpoenaed. Comments: FTR Hon. Angel Kelley, Presiding		
04/26/2021	Endorsement on Motion for funds for fire investigation/arson expert, (#18.0): ALLOWED copies sent Aug 12,2021 Judge: Kelley, Hon. Angel		 Image
06/14/2021	Event Result:: Conference to Review Status scheduled on: 06/14/2021 09:00 AM Has been: Held as Scheduled. Co-defendant attorney, Josh Werner, not available due to being in another court. After hearing, case is continued by agreement of all parties to August 12, 2021 at 9am for status. Comments: FTR Hon. William F Sullivan, Presiding		
08/12/2021	Case continued to October 26,2021 by agreement for status FTR		
10/26/2021	Case continued to 11/23/21 by agreement for status conference at 9:30 a.m. FTR (Sullivan, J.)		
11/23/2021	Defendant's presence waived. Case continued to 1/13/22 for status. FTR (Sullivan,J.)		
01/13/2022	Not held Commonwealth unavailable. Case continued to 1/27/22 by agreement for status. FTR Hon. Brian A Davis, Presiding		
01/27/2022	Event Result:: Conference to Review Status scheduled on: 01/27/2022 09:30 AM Has been: Held as Scheduled Comments: Defendant's presence waived this day. Continued by agreement for status and possible lobby on 2/24/22. (FTR) Hon. Brian A Davis, Presiding		
02/08/2022	Commonwealth, Defendant 's Joint Motion Pursuant to Rule 17 to Order the Production of Brockton Juvenile Court; filed and ALLOWED, (Davis, J.).	19	 Image
02/23/2022	Event Result:: Conference to Review Status scheduled on: 02/24/2022 09:30 AM Has been: Rescheduled For the following reason: Request of Commonwealth Hon. Brian A Davis, Presiding		
03/10/2022	Event Result:: Conference to Review Status scheduled on: 03/10/2022 09:30 AM Has been: Held as Scheduled. Deft presence waived. Case continued by agreement to 05/25/22 at 10:30AM in 1st session for Motion Hearing on Motion to Amend and Motion to Sever. Case continued to 08/25/22 at 2pm for Final Trial Conference - 2nd session. Case continued by agreement to 09/06/22 at 9:00AM for Jury Trial in 2nd session. Comments: FTR Hon. Brian A Davis, Presiding		
03/10/2022	Scheduled: Event: Jury Trial Date: 09/06/2022 Time: 09:00 AM Result: Rescheduled		
03/10/2022	Commonwealth 's Motion to provide reciprocal discovery to the prosecution pursuant to Massachusetts Criminal Procedure Rule 14(a) (1)(B); Filed and ALLOWED (Davis, J.)	20	 Image
05/25/2022	Defendant's presence waived this day. Case continued by agreement until 7/8/22 at 11:30 for hearing on motions. (Squires-Lee,J)(FTR)		
06/03/2022	Commonwealth 's Motion in limine to admit opinion testimony from Sean P Plumer CFI, CFEI Senior Fire Consultant Fire and Explosion Division	21	 Image
06/03/2022	Commonwealth 's Motion in limine to admit opinion testimony from MA State Trooper Thomas Berteletti	22	 Image
06/03/2022	Commonwealth 's Motion to admit statements of the defendants	23	 Image
06/03/2022	Commonwealth 's Motion in limine to admit statements made by Gina Louis as excited utterances	24	 Image
06/03/2022	Plymouth County District Attorney's Memorandum in opposition to defendant's motion to sever	25	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/08/2022	Event Result:: Motion Hearing scheduled on: 07/08/2022 10:30 AM Has been: Held as Scheduled Hon. William F Sullivan, Presiding		
07/15/2022	Commonwealth 's Motion in limine to admit testimony from MA State trooper David Crouse regarding the location of the defendants' cellular phones around the time of the atson fires and breaking and entering at Sears.	26	 Image
08/09/2022	Other Records received from Intake Report - 51A Report		
08/10/2022	The following form was generated: Notice to Appear Sent On: 08/10/2022 11:11:07		
08/11/2022	Event Result:: Motion Hearing scheduled on: 08/11/2022 02:00 PM Has been: Not Held For the following reason: Request of Defendant Hon. William F Sullivan, Presiding		
08/16/2022	Criminal Records received from Brockton Juvenile Court		
08/22/2022	Summons returned to court: SERVED To Eric P Degoosh by leaving at the last business address on August 17,2022	27	 Image
08/22/2022	School Records received from Worcester Polytechnic Institute		
08/24/2022	Joint Pre-Trial Memorandum filed: Applies To: Plymouth County District Attorney (Prosecutor)	28	 Image
08/24/2022	Commonwealth 's Motion in limine to introduce audio recordings of Jonathan Jironvil testifying at the petition for guardianship hearing in Brockton juvenile court and the docket history for the guardianship hearing	29	 Image
08/24/2022	Commonwealth 's Motion in limine to introduce the following business records at trial	30	 Image
08/25/2022	Event Result:: Final Trial Conference scheduled on: 08/25/2022 02:00 PM Has been: Held as Scheduled Comments: 1. Case is called for final pretrial and both defense counsel report not ready for trial. They move to continue the trial date. Commonwealth reports ready for trial and opposes the defendant's motion to continue. After hearing on the issue of continuance, the court continues the trial at defendants' request and over the objection of the Commonwealth to 11/28/22 at 9:00 with Final Trial Conference at 11/2/22 at 2:00. 2. Court orders all motions in limine along with all oppositions to be filed no later than 10/27/22 by end of business. 3. Court refers the issue of the R.17 motion pending filed by Attorney Werner on behalf of Lucnalie Jironvil but applicable to both defendants) to Judge Sullivan. Counsel are today requested to obtain a hearing date next week from Judge Sullivan. Hon. Robert B Gordon, Presiding		Image
08/25/2022	Event Result:: Jury Trial scheduled on: 09/06/2022 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Hon. Robert B Gordon, Presiding		
08/25/2022	Scheduled: Event: Jury Trial Date: 11/28/2022 Time: 09:00 AM Result: Canceled		
08/29/2022	Business Records received from Princeton Properties		
09/01/2022	School Records received from Worcester Public School System, Records Department, Dunkin Administration		
09/01/2022	Other Records received from University of Massachusetts Office of the General Counsel		
09/06/2022	Other Records received from MassDOT		
09/06/2022	Other Records received from Progressive Insurance(ClaimFox)		
09/12/2022	Other Records received from Angelo Elementary		
11/03/2022	Endorsement on Motion to admit Brockton Juvenile Court Docket Sheet of all dates regarding the petition for guardianship: RE: minor Jironvil, (#4.0): ALLOWED without opposition. The document is relevant and is self-authenticity under Mass G Evid and 902(a) copies sent Nov 8,2022		 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Judge: Gordon, Hon. Robert B		
11/03/2022	Endorsement on Motion in limine to admit opinion testimony from MA State Trooper David Crouse, (#5.0): ALLOWED subject to the Commonwealth laying a proper foundation for expert testimony (Mass G Evid and 702) copies sent Nov 8,2022 Judge: Gordon, Hon. Robert B		 Image
11/03/2022	Endorsement on Motion in limine to admit statements made by Jonathan Jironvil at the Brockton Juvenile Court Guardianship hearing, (#6.0): ALLOWED the subject statements are not offered for the truth of the matters asserted therein (but instead as evidence of the defendants' state of mind and motivations), and thus fall outside the rule of hearsay exclusion(Mass G Evid sec 801)(c)(2)) the statements are likewise the statements of a party-opponent, and thus definitinally non-hearsay under Mass G Evid sec 801(d)(2) copies sent Nov 8,2022 Judge: Gordon, Hon. Robert B		 Image
11/03/2022	Endorsement on Motion in limine to admit in-court identification pursuant to Commonwealth vs Crayton, (#7.0): ALLOWED good reason under Crayton having bee demonstrated copies sent Nov 8,2022 Judge: Gordon, Hon. Robert B		 Image
11/03/2022	Endorsement on Motion to admit electronic call logs of Jonathan and Lucnalie Jironvil at trial, (#8.0): No Action Taken Although the court recognizes that the T-Mobile records are relevant, such records will only be admitted into evidence if confirming circumstance at trial demonstrate the authenticity there of per Commonwealth vs Purdy copies sent Nov 8,2022 Judge: Gordon, Hon. Robert B		 Image
11/03/2022	Endorsement on Motion in limine to admit evidence of the protracted custody dispute regarding minor Jironvil sibling, (#9.0): ALLOWED The prior bad acts to be offered reflect the increasingly hostile and volatile custody dispute which the Commonwealth theorizes supplies the motive for this alleged crime. The evidence is thus highly probative of the defendants state of mind, is not offered for any impermissible propersity purposed (the jury to be given a limiting instruction to this effect), and its evidentiary value in establishing the asserted motivational context for the crime substantially out weights any risk of unfair prejudice to the defendants copies sent Nov 8,2022 Judge: Gordon, Hon. Robert B		 Image
11/03/2022	Endorsement on Motion in limine to admit opinion testimony from Sean P Plumer, CFI, CFEI Senior Fire Consultant Fire and Explosion Division, (#21.0): ALLOWED subject to the Commonwealth laying a proper foundation for expert testimony and opinion (Mas G Evid sec 702) copies sent Nov 8,2022 Judge: Gordon, Hon. Robert B		 Image
11/03/2022	Endorsement on Motion in limine to admit opinion testimony from MA State Trooper Thomas Berteletti, (#22.0): ALLOWED subject to the Commonwealth laying a proper foundation for expert testimony and opinion (Mass G Evid sec 702) copies sent Nov 8,2022 Judge: Gordon, Hon. Robert B		 Image
11/03/2022	Endorsement on Motion to admit statements of the defendants, (#23.0): ALLOWED the referenced statements of the defendants are relevant to their states of mind, and may be admitted subject to the laying of a proper foundation and the giving of a humane practices instruction copies sent Nov 8,2022 Judge: Gordon, Hon. Robert B		 Image
11/03/2022	Endorsement on Motion in limine to admit statements made by Gina Louis as excited utterances, (#24.0): No Action Taken prior to Herve Louis taking the witness stand at trial, the court will conduct a voir dire of this declarant to determine if the statements attributed to Gina Louis qualify for the spontaneous utterance exception to the hearsay rule(Mass G Evid sec 803 (2)), and if its admission is consistent with constitutional requirements of the Sixth Amendment confrontation clause copies sent Nov 8,2022 Judge: Gordon, Hon. Robert B		 Image
11/03/2022	Endorsement on Motion in limine to admit testimony from MA State Trooper David Crouse regarding the location of the defendants' cellular phones around the time of the arson fires and breaking and entering at Sears, (#26.0): ALLOWED subject to the Commonwealth laying a proper foundation for expert testimony and opinion (Mass G Evid sec 702) copies sent Nov 8,2022 Judge: Gordon, Hon. Robert B		 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
11/03/2022	Endorsement on Motion in limine to introduce the audio recording of Jonathan Jironvil testifying at the petition for guardianship hearing in Brockton Juvenile Court and the Docket History for the guardianship hearing, (#29.0): ALLOWED The evidence is probative of the defendants state of mind and motivations; and as sealed audio-recording of a court proceedings, it is self-authenticating per Mass G Evid sec 902(a) copies sent Nov 8,2022 Judge: Gordon, Hon. Robert B		 Image
11/03/2022	Endorsement on Motion in limine to introduce the following business records at trial, (#30.0): DENIED although the court acknowledges the evident relevance of these documents, failing stipulation the Commonwealth will need to lay the required foundation for their admission as authentic business records copies sent Nov 8,2022 Judge: Gordon, Hon. Robert B		 Image
11/03/2022	Commonwealth 's Motion in limine to admit the substitute testimony of the Massachusetts State Trooper Brian Tully regarding the location data associated with the defendants' cellular phones; Filed and Allowed without opposition copies sent Nov 8,2022 Judge: Gordon, Hon. Robert B	31	 Image
11/03/2022	General correspondence regarding Defendant's proposed voir dire questions; Filed and ALLOWED the court will permit attorney participation in the individual voir dire phase of jury selection as and to the extent the provide for in the impalement statement previously circulated to the counsel. The court will supplement this statement's approved questions to include a verification of #3 hereof copies sent Nov 8,2022	32	 Image
11/03/2022	Defendant 's Motion for determination of privilege; Filed and ALLOWED the Commonwealth is directed to apprise the court of any questions likely to trigger an assertion of attorney client privilege, and to do so prior to calling Mr DiMarzio to testify at trial. If as asserted by ADA Zane at hearing the Commonwealth intends to elicit the same evidence from this witness that he presented to the Grand Jury, the defendant may seek an in limine ruling regarding any privilege-based challenge to such evidence copies sent Judge: Gordon, Hon. Robert B	33	 Image
11/03/2022	Defendant 's Motion in limine regarding the term "victim"; Filed and ALLOWED without opposition. The Commonwealth shall direct it witnesses to refer to third parties by their names or as "alleged victims" copies sent Nov 8,2022 Judge: Gordon, Hon. Robert B	34	 Image
11/03/2022	Event Result:: Final Pre-Trial Conference scheduled on: 11/03/2022 02:00 PM Has been: Held as Scheduled Hon. Robert B Gordon, Presiding		
11/18/2022	Attorney appearance On this date George Papachristos, Esq. added as Private Counsel for Defendant Jonathan Jironvil	35	 Image
11/22/2022	Event Result:: Jury Trial scheduled on: 11/28/2022 09:00 AM Has been: Canceled For the following reason: Request of Defendant Hon. Robert B Gordon, Presiding		
11/22/2022	Event Result:: Motion Hearing scheduled on: 11/22/2022 12:00 PM Has been: Held as Scheduled Comments: After hearing the defendant's motion to continue is allowed. R.36 is waived. Atty. Christian is permitted to withdraw. Matter is scheduled for Trial 3/13/23, for Final Pretrial 3/2/23 at 2:00. All motions are due by end of business 12/31/22. Hearing on all motions is scheduled for 1/13/23 at 9:00 in 2nd Criminal. Hon. Robert B Gordon, Presiding		
11/22/2022	Scheduled: Event: Jury Trial Date: 03/13/2023 Time: 09:00 AM Result: Rescheduled		
11/22/2022	Defendant 's Joint Motion To Continue Trial ALLOWED after hearing. R. 36 Waived (Gordon, J) (FTR)	36	 Image
11/22/2022	Attorney appearance On this date Robert B Christian, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Jonathan Jironvil		
01/04/2023	Defendant 's Motion to continue	37	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
01/06/2023	Defendant Robert B Christian, Esq., George Papachristos, Esq.'s Joint Motion to continue trial is Denied. January 9, 2023. Hallal J.	38	 Image
01/11/2023	Defendant 's Joint Motion to continue hearing : filed and allowed, motion hearing continued to January 27, 2023 at 9:30AM (Sullivan,J)	39	 Image
01/11/2023	Event Result:: Motion Hearing scheduled on: 01/13/2023 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Hon. William F Sullivan, Presiding		
01/27/2023	Endorsement on Defendant's joint motion to continue trial;, (#39.0): ALLOWED Judge: Sullivan, Hon. William F		
01/27/2023	Defendant 's Motion for funds for a private investigator; filed and allowed (Sullivan,J)	40	
01/27/2023	Defendant 's Motion for funds for an arson expert; filed an allowed (Sullivan,J) ***due to clerical error pleading # 41 was originally docketed as Commonwealths motion and was changed to reflect the correct filing by the defendant. edited 4/8/24 Patrick Creedon, assistant clerk	41	 Image
01/27/2023	Defendant 's Motion for funds for a cell site expert; filed an allowed (Sullivan,J)	42	
01/27/2023	Case continued to February 13, 2023 at 2pm by agreement for filing motion to dismiss and scheduling all parties to appear in person ftr		
01/27/2023	Event Result:: Jury Trial scheduled on: 03/13/2023 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Hon. William F Sullivan, Presiding		
02/13/2023	Event Result:: Conference to Review Status scheduled on: 02/13/2023 02:00 PM Has been: Rescheduled For the following reason: Attorney on another trial Hon. William F Sullivan, Presiding		
02/24/2023	Event Result:: Conference to Review Status scheduled on: 02/27/2023 02:00 PM Has been: Rescheduled For the following reason: Request of Defendant Hon. William F Sullivan, Presiding		
03/02/2023	Defendant 's Motion To Dismiss All Charges Against Him	43	 Image
03/02/2023	Defendant 's Memorandum Supporting Motion To Dismiss All Charges Against Him	44	 Image
03/02/2023	Case continued to 04/05/2023 at 3:00 p.m. for O'Dell /McCarthy Motion. PTC on 05/12/2023 at 2:00 p.m. Trial Scheduled on 05/22/2023 at 9:00 a.m. All events being held in the 2nd Session. All Motions in Limine, Joint Pre Trial Motion an witness List due 5 Days prior to Final Pre Trial Conference. (Sullivan, J) (FTR)		Image
03/03/2023	The following form was generated: Notice to Appear For Pre Trial Conference Sent On: 03/03/2023 11:02:29	45	
03/03/2023	The following form was generated: Notice to Appear For Jury Trial Sent On: 03/03/2023 11:05:26	46	
03/30/2023	Commonwealth 's Memorandum in opposition to defendant's motion to dismiss	47	 Image
04/05/2023	Case continued to April 20, 2023 at 3pm by agreement for motion to dismiss ftr		Image
04/06/2023	Defendant oral motion to continue; after hearing allowed (Sullivan,J)		
04/18/2023	Defendant 's Memorandum supporting their motion to dismiss all charges	48	 Image
04/20/2023	After hearing on defendant's motion to dismiss taken under advisement Case continue to May 12, 2023 at 2pm for final pre-trial conference FTR		Image
05/01/2023	Endorsement on Motion to dismiss all charges against him, (#43.0): DENIED see memo decision and order copies sent May 2,2023		 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Judge: Sullivan, Hon. William F		
05/01/2023	MEMORANDUM & ORDER: AND DECISION on defts motion to dismiss; The defendants' Motion to Dismiss is DENIED copies sent May 2,2023 Judge: Sullivan, Hon. William F	49	 Image
05/09/2023	Commonwealth 's Request to renew prior motions in limine	50	
05/09/2023	Commonwealth's proposed jury questions	51	 Image
05/11/2023	Defendant 's Motion In Opposition to the Commonwealth's Motion to Admit Electronic Text Messages Sent by Lucnali Jironvil to Trooper Thomas Berteletti	52	 Image
05/12/2023	Defendant 's Joint Pretrial Memorandum	53	 Image
05/12/2023	Defendant 's Motion To Reconsider Commonwealth's Motion In Limine To Admit Statements made By Jonathan Jirvonil At The Brockton Juvenile Court Guardianship Hearing And Defendant's Motion In Limine Regarding Mr. Jironvil's Testimony At The Guardianship Hearing And Other Evidence Related To Defendant's Actions To Show Alleged Strife And Contention Caused By Family Court Proceedings	54	 Image
05/12/2023	Commonwealth 's Motion To Admit Electronic Text Messages Sent By Lucnalie Jironvil To Trooper Thomas Berteletti	55	 Image
05/12/2023	Event Result:: Pre-Trial Conference scheduled on: 05/12/2023 02:00 PM Has been: Held as Scheduled Hon. William F Sullivan, Presiding		
05/22/2023	Case called for trial Jury of 14 members impaneled not sworn FTR		
05/22/2023	Defendant 's motion for voir dire	56	
05/23/2023	Scheduled: Event: Jury Trial Date: 05/23/2023 Time: 09:00 AM Result: Held as Scheduled		
05/23/2023	Scheduled: Event: Jury Trial Date: 05/24/2023 Time: 09:00 AM Result: Held as Scheduled		
05/23/2023	Attorney appearance On this date Robert V Whynott, Esq. added as Private Counsel for Defendant Jonathan Jironvil		
05/23/2023	List of jurors filed. jury or 14 members impaled and sworn	57	
05/23/2023	Trial continues before Sullivan,J and jury ftr		
05/23/2023	Defendant 's Motion to exclude expert testimony from Massachusetts State Trooper David Crose	58	
05/23/2023	Defendant 's Motion to exclude the opinion testimony and or conduct voir dire of Attorney Eric Degoosh Dimarzio	59	
05/23/2023	Defendant 's Motion to exclude the opinion testimony of Matthew Morrison	60	
05/23/2023	Defendant 's Motion to exclude the opinion testimony and or conduct voir dire Attorney Eric Degoosh Dimarzio	61	
05/23/2023	Defendant 's Motion to conduct voir dire of Trooper Brian Tully	62	
05/24/2023	Trial continues before Sullivan,J and jury ftr		
05/25/2023	Trial continues before Sullivan,J and jury ftr		
05/26/2023	Trial continues before Sullivan,J and jury ftr		
05/30/2023	Trial continues before Sullivan,J and jury ftr		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
05/31/2023	Trial continues before Sullivan,J and jury ftr Result: Held as Scheduled		
05/31/2023	After Voir dire of witness T. Bertoletti, the Court finds that the witness may offer his opinion (Sullivan,J) FTR		
05/31/2023	Defendant 's motion in limine to permit defense counsel to describe reasonable doubt during defense closing	63	
05/31/2023	After voir dire of witness B. Tulley, the court finds the witness may testify as to his review of records (Sullivan,J) FTR Result: Held as Scheduled		
05/31/2023	Docket Note: After hearing text and phone calls to Lucnalie Jironvil excluded. Phone calls and discussion with Jonathan Jironvil excluded. After voir dire, court finds Thomas Berteletti Ma State Police Fire Investigation can testify as to his opinions (Sullivan,J) FTR Judge: Sullivan, Hon. William F		
05/31/2023	Endorsement on Motion to reconsider commonwealth's motion in limine to admit statements made by Jonathan Jirvonil at the Brockton Juvenile Court Guardianship hearing and defendant's motion in limine regarding Mr Jironvil;s testimony at the guardianship hearing and other evidence related to defendants' actions to show alleged strife and contention caused by family court proceedings, (#54.0): DENIED (Sullivan,J) Judge: Sullivan, Hon. William F		
05/31/2023	Endorsement on Motion to admit electronic text messages sent by Lucnalie Jironvil to Trooper Thomas Berteletti, (#55.0): DENIED (Sullivan,J) Judge: Sullivan, Hon. William F		
05/31/2023	Endorsement on Motion for voir dire, (#56.0): ALLOWED as discussed on the record (Sullivan,J) Judge: Sullivan, Hon. William F		
05/31/2023	Endorsement on Motion to exclude expert testimony from Massachusetts State Trooper David Crose, (#58.0): No Action Taken (Sullivan,J) Judge: Sullivan, Hon. William F		
05/31/2023	Endorsement on Motion to exclude the opinion testimony and or conduct voir dire of attorney Eric Degoosh Dimarzio, (#59.0): ALLOWED (Sullivan,J) Judge: Sullivan, Hon. William F		
05/31/2023	Endorsement on Motion to exclude the opinion testimony of Matthew Morrison, (#60.0): ALLOWED (Sullivan,J) Judge: Sullivan, Hon. William F		
05/31/2023	Endorsement on Motion to exclude the opinion testimony and or conduct voir dire Attorney Eric Degoosh Dimarzio, (#61.0): ALLOWED (Sullivan,J) Judge: Sullivan, Hon. William F		
05/31/2023	Endorsement on Motion to conduct voir dire of Trooper Brian Tully, (#62.0): ALLOWED (Sullivan,J) Judge: Sullivan, Hon. William F		
05/31/2023	Endorsement on Motion in limine to permit defense counsel to describe reasonable doubt during defense closing, (#63.0): ALLOWED (Sullivan,J) Judge: Sullivan, Hon. William F		
06/01/2023	Event Result:: Jury Trial scheduled on: 06/01/2023 09:00 AM Has been: Held as Scheduled Hon. William F Sullivan, Presiding		
06/01/2023	Defendant oral motion for directed verdict, After hearing DENIED (Sullivan,J) FTR		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Judge: Sullivan, Hon. William F		
06/01/2023	Commonwealth oral motion to dismiss count 6 with the assent of defendant; ALLOWED (Sullivan,J) FTR Judge: Sullivan, Hon. William F		
06/02/2023	Scheduled: Event: Jury Trial Date: 06/02/2023 Time: 09:00 AM Result: Held as Scheduled		
06/02/2023	Offense Disposition: Charge #1 ARSON OF DWELLING HOUSE c266 §1 On: 06/02/2023 Judge: Hon. William F Sullivan By: Jury Trial Guilty Verdict Charge #2 ASSAULT TO MURDER c265 §15 265/15/A-0 On: 06/02/2023 Judge: Hon. William F Sullivan By: Jury Trial Guilty Verdict Charge #3 ASSAULT TO MURDER c265 §15 265/15/A-0 On: 06/02/2023 By: Jury Trial Guilty Verdict Charge #4 ASSAULT TO MURDER c265 §15 265/15/A-0 On: 06/02/2023 By: Jury Trial Guilty Verdict Charge #5 DESTRUCTION OF PROPERTY +\$1200, MALICIOUS c266 §127 On: 06/02/2023 By: Jury Trial Guilty Verdict Charge #6 WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B 268/13B/A-5 On: 06/02/2023 By: Jury Trial Dismissed - Request of Commonwealth		
06/02/2023	Case continued to June 22,2023 @ 2:00PM for sentencing (Sullivan,J) FTR		
06/02/2023	The defendant\petitioner is committed without bail for the following reason: Per Order of the Court.	64	
06/02/2023	Defendant oral motion for judgment notwithstanding the verdict, After hearing Taken under advisement (Sullivan,J) Judge: Sullivan, Hon. William F		
06/02/2023	Verdict affirmed, verdict slip filed Judge: Sullivan, Hon. William F	65	
06/08/2023	Habeas Corpus for defendant issued to Plymouth County House of Correction returnable for 06/22/2023 02:00 PM Hearing for Sentence Imposition. Transport defendant to court for in person hearing	66	
06/20/2023	Event Result:: Hearing for Sentence Imposition scheduled on: 06/22/2023 02:00 PM Has been: Not Held For the following reason: Joint request of parties Hon. William F Sullivan, Presiding		
06/26/2023	Defendant sentenced:: Sentence Date: 06/26/2023 Judge: Hon. William F Sullivan Charge #: 1 ARSON OF DWELLING HOUSE c266 §1 State Prison Sentence Not Less Than: 8 Years, 0 Months, 0 Days Not More Than: 10 Years, 0 Months, 0 Days Charge #: 2 ASSAULT TO MURDER c265 §15 State Prison Sentence Not Less Than: 8 Years, 0 Months, 0 Days Not More Than: 10 Years, 0 Months, 0 Days Served Concurrently Charge # 1 Charge #: 3 ASSAULT TO MURDER c265 §15 State Prison Sentence Not Less Than: 8 Years, 0 Months, 0 Days Not More Than: 10 Years, 0 Months, 0 Days Served Concurrently Charge # 1 Charge #: 4 ASSAULT TO MURDER c265 §15 State Prison Sentence Not Less Than: 8 Years, 0 Months, 0 Days Not More Than: 10 Years, 0 Months, 0 Days Served Concurrently Charge # 1		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Charge #: 5 DESTRUCTION OF PROPERTY +\$1200, MALICIOUS c266 §127 State Prison Sentence Not Less Than: 8 Years, 0 Months, 0 Days Not More Than: 10 Years, 0 Months, 0 Days Served Concurrently Charge # 1 Committed to Souza Baranowski Correctional Center Credits 24 Days		
06/26/2023	Issued on this date: Mittimus for Sentence (All Charges) Sent On: 06/26/2023 14:46:37	67	
06/26/2023	Event Result:: Hearing for Sentence Imposition scheduled on: 06/26/2023 02:00 PM Has been: Held as Scheduled Hon. William F Sullivan, Presiding		
06/26/2023	Defendant 's Motion to be declared indigent	67.1	
06/26/2023	Commonwealth files sentence recommendation	72	
06/26/2023	Notice of appeal filed. Applies To: Jironvil, Jonathan (Defendant)	73	 Image
06/26/2023	Defendant 's Motion to appoint appellate counsel	74	
07/05/2023	Mittimus returned to court: SERVED	68	Image
07/05/2023	Notice of appeal from sentence to Souza Baranowski Correctional Center filed by defendant	69	
07/11/2023	General correspondence regarding processing of appellate paperwork from Attorney George Papachristos	70	Image
07/25/2023	Notification to the Appellate Division sent. cc: AZ, GP, RW, probation	71	
07/25/2023	Document: Letter to the Appellate Division Sent On: 07/25/2023 14:45:51		
07/28/2023	Appeal for review of sentence entered at the Appellate Division: Originating Court: Plymouth County Receiving Court: Suffolk County Criminal Case Number: 2384AD169-PL ;		
08/02/2023	Case sent to Plymouth Superior - BROCKTON Location.		
10/13/2023	General correspondence regarding request for info (docket sheet mailed out)	75	
10/24/2023	Endorsement on Defendant 's Motion to appoint appellate counsel, (#74.0): ALLOWED Counsel will remain for sentencing appeal Judge: Sullivan, Hon. William F		 Image
10/30/2023	Attorney appearance On this date Patrick Levin, Esq. added as Appointed - Appellate Action for Defendant Jonathan Jironvil	76	
10/30/2023	General correspondence regarding Jonathan Jironvil wants copies of records (I sent him a docket sheet to circle what he wants and send back to us)	77	
11/06/2023	General correspondence regarding Defendant requesting copies of highlighted entries	78	
11/06/2023	General correspondence regarding Letter from Jonathan Jironvil inquiring on Status of assembly of the record	79	 Image
02/15/2024	CD of Transcript of 11/03/2022 02:00 PM Final Pre-Trial Conference, 04/20/2023 03:00 PM Non-Evidentiary Hearing to Dismiss, 05/12/2023 02:00 PM Pre-Trial Conference, 05/22/2023 09:00 AM Jury Trial, 05/23/2023 09:00 AM Jury Trial, 05/24/2023 09:00 AM Jury Trial, 05/25/2023 09:00 AM Jury Trial, 05/26/2023 09:00 AM Jury Trial, 05/30/2023 09:00 AM Jury Trial, 05/31/2023 09:00 AM Jury Trial, 06/01/2023 09:00 AM Jury Trial, 06/02/2023 09:00 AM Jury Trial, 06/26/2023 02:00 PM Hearing for Sentence Imposition received from Christine Fiore.		
03/25/2024	One (1) copy of docket entries, original copy of transcript, one (1) copy of notice of assembly issued to parties, one (1) copy of exhibit list and list of documents, and copy of the notice of appeal, each transmitted electronically to clerk of appellate court	80	
03/25/2024	Notice to Clerk of the Appeals Court of Assembly of Record	81	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/25/2024	Notice of assembly of record sent to Counsel	82	
03/27/2024	Appeal entered in Appeals Court on 03/26/2024 docket number 2024-P-0329	83	
06/25/2024	Defendant 's Request for juror information	84	 Image
08/12/2024	Event Result:: Motion Hearing scheduled on: 08/27/2024 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. William F Sullivan, Presiding		 Image
08/30/2024	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 09/03/2024 03:00 PM Motion Hearing. VIA ZOOM Meeting ID: 160-5247-2134 (No Password)	85	 Image
09/03/2024	Defendant 's Motion to unseal search warrants materials	86	
09/03/2024	Endorsement on Motion to unseal search warrant materials, (#86.0): ALLOWED copy sent Sept 9,2024 Judge: Sullivan, Hon. William F		 Image
09/03/2024	Defendant's request for juror information #84 Held Matter taken under advisement and motion to unseal search warrant material filed and allowed FTR		
09/11/2024	Endorsement on Request for juror information verified, (#84.0): ALLOWED (see Comm vs Moore 474, MASS 541(2016) copies sent Sept 12,2024 Judge: Sullivan, Hon. William F		 Image
10/24/2024	Defendant 's Motion for new trial (list of exhibits not scanned)	87	
10/24/2024	Defendant 's Motion for stay of execution of sentence	88	 Image
10/24/2024	Defendant 's Motion to impound unredacted expert report	89	 Image
10/31/2024	ORDER: on Defendant's Motion for New Trial	90	 Image
11/12/2024	Order from Appellate Division of the Superior Court for the Review of Sentence it is ORDERED: Withdrawn	91	  Image
12/02/2024	Endorsement on Motion for stay of execution of sentence, (#88.0): DENIED without prejudice		 Image
12/02/2024	Endorsement on Motion to impound unredacted expert report, (#89.0): ALLOWED		 Image
01/02/2025	Notice of docket entry received from Appeals Court ORDER: RE#13,14,15: Before me is a motion of the defendant to stay further execution of his sentence pending appeal pursuant to Mass. R. A. P. 6. After a jury trial, the defendant was convicted of one count of arson of a dwelling house under G.L. c. 266, § 1, three counts of assault with intent to murder under G.L. c. 265, § 15, and one count of malicious destruction of property over \$1,200 under G.L. c. 266, § 127. On June 26, 2023, the trial judge sentenced the defendant to five concurrent sentences of eight to ten years in state prison. On October 24, 2024, the defendant filed motions for new trial and for stay of execution under Mass. R. Crim. P. 31(a). The motion for new trial remains pending at this time, but the judge denied the motion to stay without prejudice on December 2, 2024 without conducting a hearing. "When considering the merits of a motion to stay the execution of a sentence, a judge should consider two factors. First is whether the appeal presents 'an issue which is worthy of presentation to an appellate court, one which offers some reasonable possibility of a successful decision in the appeal.' Second, the judge should consider 'the possibility of flight to avoid punishment; potential danger to any other person or to the community; and the likelihood of further criminal acts during the pendency of the appeal.'" <i>Christie v. Commonwealth</i> , 484 Mass. 397, 400 (2020) (internal citations omitted). The defendant bears the burden "to prove both factors by a preponderance of the evidence." <i>Commonwealth v. Kalila</i> , 493 Mass. 636, 642 (2024). In reviewing a trial court judge's denial of a stay, the single justice may either review the judge's ruling for an error of law or abuse of discretion or conduct an independent review of the merits. See <i>Commonwealth v. Nash</i> , 486 Mass. 394, 410 (2020). Where I do not have the benefit of findings in support of the judge's decision to deny the defendant's motion to stay, I consider the motion de novo. See <i>Commonwealth v. Cohen</i> , 456 Mass. 128, 133 (2010). The defendant argues that he has a reasonable likelihood of success on the merits of his motion for new trial based on claims of ineffective assistance of counsel and violations under <i>Brady v. Maryland</i> , 373 U.S. 83 (1963), due to the Commonwealth's failure to disclose exculpatory evidence. Upon close consideration of the record and relevant caselaw, I discern that the defendant has presented "at least one appellate issue of sufficient heft that would give an appellate court pause." See <i>Nash</i> , 486 Mass. at 404. Accordingly, I turn to whether the defendant's release poses a security risk. See <i>Commonwealth v. Charles</i> , 466 Mass. 63, 77 (2013). The defendant contends that his release would not pose a security risk based on his lack of prior criminal record, history of release on personal recognizance, and ties to the community. I have carefully reviewed the entire record before me, including the trial court docket, the	92	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	defendant's motion and supporting documents, the Commonwealth's response in opposition, and the defendant's supplemental memorandum. In consideration of the foregoing, I conclude that the defendant has not shown - as he must - that his release would not create a risk of flight to avoid punishment or a security risk to other persons or the community. See Nash, 486 Mass. at 405; Christie, 484 Mass. at 400. Security considerations "involve determinations of fact and the exercise of sound, practical judgment, and common sense." Commonwealth v. Hodge, 380 Mass. 851, 855 (1980). I have considered the defendant's representations regarding his familial status, education and employment history, ties to the community, lack of criminal record, and prior release on recognizance. See <i>ibid</i> . Furthermore, I recognize that the defendant has ongoing support from members of the community who provided letters attesting to his character and work ethic. However, I have also considered the violent nature and seriousness of the crimes for which he was convicted, as it bears on his risk to others, and given appropriate weight to the strength of the evidence against him. See Nash, 486 Mass. at 405. The defendant was convicted of arson of a dwelling house and three counts of assault with intent to murder, as the home was occupied when the fire began. I have further considered the potential danger posed by the defendant's release to the victims and testifying witnesses in this case, particularly in light of the history of hostility and altercations between the defendant and one of the victims in the months leading up to the fire. I recognize that the defendant appeared in court consistently during the four years he was released on recognizance and represented he was never accused of violating the terms of his release. Nonetheless, the circumstances the defendant now finds himself in are wholly different - the defendant has been incarcerated for more than eighteen months and is presently serving an eight- to-ten-year sentence. While I acknowledge the comprehensive and thoughtful arguments of counsel on behalf of the petitioner in this matter, on the record before me, I find that a stay pending appeal would present nontrivial security concerns, and I further conclude that the defendant has not established that he is entitled to a stay of execution of his sentence. Accordingly, the motion is denied.		
02/20/2025	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 02/26/2025 03:00 PM Motion Hearing. Please Transport Defendant to Court	93	
02/26/2025	Case called, all parties appear in person. Commonwealth has until 3/20/25 to file their response. Case continued by agreement until 4/16/25. (Sullivan,J)(FTR)		
04/15/2025	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 04/16/2025 02:00 PM Motion Hearing. Please Have Defendant Appear Via Zoom ZOOM ID: 161-4544-3995 No Passcode CANCELLED	94	
04/16/2025	Event Result:: Motion Hearing scheduled on: 04/16/2025 02:00 PM Has been: Rescheduled For the following reason: Request of Commonwealth Hon. William F Sullivan, Presiding		
04/25/2025	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 04/28/2025 02:00 PM Motion Hearing. Defendant Appear Via Zoom ZOOM ID: 161-4061-9325 No Passcode	95	
04/28/2025	Case continued by Agreement to 05/21/2025 at 2:00 p.m. for Scheduling. Commonwealth's Opposition due by 05/05/2025. (W.Sullivan, J) (FTR)		
05/06/2025	Commonwealth 's Consolidated Opposition To The Defendant's Motions For New Trial	96	
05/20/2025	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 05/21/2025 02:00 PM Scheduling Conference. Please have Defendant appear via Zoom. ZOOM ID: 161-4544-3995 No Passcode	97	Image
05/21/2025	Case called before Judge Sullivan. After hearing continued to June 25,2025 at 9:00am for evidentiary hearing for motion for new trial (habe in deft) FTR		
05/22/2025	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 06/25/2025 09:00 AM Motion Hearing. Please be here by 8:30am Applies To: Jironvil, Jonathan (Defendant)	98	
06/25/2025	Commonwealth oral motion to sequester witnesses; Allowed (Sullivan,J)		
06/25/2025	After hearing on Defendant's motion for a new trial, case continued to June 27, 2025 at 11AM By agreement for further hearing FTR		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/26/2025	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 06/27/2025 11:00 AM Motion Hearing. **** Please have Defendant Arrive for 9:00 a.m.****	100	
06/27/2025	Event Result:: Motion Hearing scheduled on: 06/27/2025 11:00 AM Has been: Held as Scheduled Hon. William F Sullivan, Presiding		
06/30/2025	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 07/01/2025 09:30 AM Motion Hearing. **** Please have Defendant Arrive for 8:30 a.m.****	101	
07/01/2025	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 07/02/2025 09:00 AM Motion Hearing. **** Please have Defendant Arrive for 8:30 a.m.****	102	
07/01/2025	Event Result:: Motion Hearing scheduled on: 07/01/2025 09:30 AM Has been: Held as Scheduled Hon. William F Sullivan, Presiding		
07/02/2025	Defendant 's Motion to limit cross-examination of Johnathan Jironvil	103	
07/02/2025	Commonwealth 's opposition to the defendant's motion to limit cross-examination of Jonathan Jironvil	104	
07/02/2025	Defendant 's Motion for funds fir digital forensic expert; filed and Allowed (Sullivan,J)	105	
07/02/2025	Event Result:: Motion Hearing scheduled on: 07/02/2025 09:00 AM Has been: Held as Scheduled Hon. William F Sullivan, Presiding		
07/14/2025	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 07/15/2025 09:30 AM Motion Hearing. **** Please have Defendant Arrive for 8:30 a.m.****	106	
07/15/2025	After hearing, Defendant's motion for a new trial; Taken under advisement Memorandum are to be filed by July 29, 2025 FTR Heard in Civil A		
07/29/2025	Defendant 's Supplemental memorandum in support of motion for new trial(Emailed to Judge Sullivan on July 29,2025)	107	 Image
08/21/2025	Endorsement on Defendant 's Motion for new trial, (#87.0): DENIED see findings of fact, rulings of law and order on defendants' motions for a new trial Judge: Sullivan, Hon. William F		
08/21/2025	Findings of Fact and Rulings of Law: and order on Defendants' motions for a new trial Judge: Sullivan, Hon. William F	108	 Image
08/25/2025	Notice of appeal filed from denial of motion for a new trial Applies To: Jironvil, Jonathan (Defendant)	109	 Image
11/18/2025	CD of Transcript of 06/25/2025 09:00 AM Motion Hearing, 06/27/2025 11:00 AM Motion Hearing, 07/01/2025 09:30 AM Motion Hearing, 07/02/2025 09:00 AM Motion Hearing, 07/15/2025 09:30 AM Motion Hearing received from Christine Fiore.		
11/21/2025	Defendant 's renewed motion for stay of execution of sentence Applies To: Jironvil, Jonathan (Defendant)	110	 Image
12/19/2025	One (1) copy of docket entries, original copy of transcript, one (1) copy of notice of assembly issued to parties, one (1) copy of exhibit list and list of documents, and copy of the notice of appeal, each transmitted electronically to clerk of appellate court	111	 Image
12/19/2025	Notice to Clerk of the Appeals Court of Assembly of Record	112	
12/19/2025	Notice of assembly of record sent to Counsel	113	
12/23/2025	Appeal entered in Appeals Court on 12/22/2025 docket number 2025-P-1560	114	 Image

2083CR00013 Commonwealth vs. Jironvil, Lucnalie

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 01/22/2020
- DCM Track:
- B - Complex
- Initiating Action:
- ARSON OF DWELLING HOUSE c266 §1
- Status Date:
- 02/25/2020
- Case Judge:
-
- Next Event:
-

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

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
01/22/2020	Indictment(s) returned	1	
01/23/2020	Commonwealth 's Motion to amend indictments against Jonathan Jironvil and Lucnalie Jironvil	2	
01/23/2020	Commonwealth 's Motion to amend the indictments against Jonathan Jironvil and Lucnalie Jironvil; This matter came before the Court on January 23,2020 for hearing on motion to amend copies mailed Jan 24,2020 Judge: Kelley, Hon. Angel	3	 
02/24/2020	Issued: Default Warrant issued on 02/24/2020 for Jironvil, Lucnalie		
02/24/2020	Event Result:: Arraignment scheduled on: 02/24/2020 09:00 AM Has been: Not Held For the following reason: Defendant defaulted Hon. Angel Kelley, Presiding		
02/24/2020	Commonwealth 's Motion To Admit Brockton Juvenile Court Docket Sheet Of All Dates Regarding The Petition For Guardianship RE: Minor Jironvil	4	
02/24/2020	Commonwealth 's Motion In Limine To Admit Opinion Testimony From MA State Trooper David Crouse	5	
02/24/2020	Commonwealth 's Motion In Limine To Admit Statements Made By Jonathan Jironvil At The Brockton Juvenile Court Guardianship Hearing	6	
02/24/2020	Commonwealth 's Motion In Limine To Admit In-Court Identification Pursuant to Commonwealth v. Crayton	7	
02/24/2020	Commonwealth 's Motion To Admit Electronic Call Logs Of Jonathan and Lucnalie Jironvil At Trial	8	
02/24/2020	Commonwealth 's Motion In Limine To Admit Evidence Of The Protracted Custody Dispute Regarding Minor Jironvil Sibling	9	
02/25/2020	Defendant comes into court, warrant recalled. Case continued for arraignment on 3/16/20. (Kelley,J)(FTR)		
03/16/2020	Event Result:: Arraignment scheduled on: 03/16/2020 09:00 AM Has been: Rescheduled For the following reason: Court Closure Hon. Angel Kelley, Presiding		
04/27/2020	Event Result:: Arraignment scheduled on: 04/29/2020 09:00 AM Has been: Not Held For the following reason: By Court due to Covid-19 Hon. Mark Gildea, Presiding		
06/23/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Arraignment scheduled on:		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	06/26/2020 09:00 AM Has been: Rescheduled-Covid-19 emergency Hon. Angel Kelley, Presiding		
08/24/2020	Attorney appearance On this date Joshua David Werner, Esq. added as Appointed - Indigent Defendant for Defendant Lucnalie Jironvil Appointment made for the purpose of Case in Chief by Judge Hon. Robert C Cosgrove.	10	 Image
08/24/2020	Case continued to September 29,2020 for pre trial conference, defendant's presence waived (Cosgrove,J) FTR		
08/24/2020	Defendant arraigned before Court. Judge: Cosgrove, Hon. Robert C		
08/24/2020	Plea of not guilty entered on all charges. Judge: Cosgrove, Hon. Robert C		
08/24/2020	Released on \$100.00 Personal Recognizance; Conditions; Stay away & no contact with alleged victims Judge: Cosgrove, Hon. Robert C		
08/24/2020	Bail warnings read Judge: Cosgrove, Hon. Robert C		
08/24/2020	ORDER: Commonwealth's proposed protective order re; Brockton Juvenile court audio recordings;	11	 Image
08/25/2020	Sent to Registry of Motor Vehicles, Department of Revenue and Department of Transitional Assistance: Notice of Unpaid Legal Counsel Fees Sent On: 08/25/2020 09:53:44	12	Image
08/25/2020	Case assigned to: DCM Track B - Complex was added on 08/25/2020	13	
09/28/2020	Event Result:: Pre-Trial Conference scheduled on: 09/29/2020 09:00 AM Has been: Rescheduled For the following reason: Request of Commonwealth Hon. Robert C Cosgrove, Presiding		
10/20/2020	Event Result:: Pre-Trial Conference scheduled on: 10/22/2020 09:00 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Angel Kelley, Presiding		
11/20/2020	Case continued to February 9,2021 by agreement for discovery compliance FTR		
02/09/2021	Oral motion to continue allowed. Case continued until 3/18 for hearing on compliance (Sullivan,J)(FTR)		
03/18/2021	ADA Zane present in court. Atty. Werner present via Zoom. After hearing, case continued to April 22, 2021 at 9:00 a.m. for status. Defendant's presence waived. FTR (J. Sullivan)		
04/22/2021	Event Result:: Conference to Review Status scheduled on: 04/22/2021 09:00 AM Has been: Rescheduled For the following reason: Commonwealth failed to appear Hon. Angel Kelley, Presiding		
04/23/2021	Event Result:: Conference to Review Status scheduled on: 04/23/2021 09:00 AM Has been: Held as Scheduled. Defendant presence waived. After hearing, case continued to June 14, 2021 at 9am for status of records subpoenaed. Comments: FTR Hon. Angel Kelley, Presiding		
06/14/2021	Event Result:: Conference to Review Status scheduled on: 06/14/2021 09:00 AM Has been: Held as Scheduled. Defendant attorney, Josh Werner, not available due to being in another court. After hearing, case is continued by agreement of all parties to August 12, 2021 at 9am for status. Comments: FTR Hon. William F Sullivan, Presiding		
08/12/2021	Case continued to October 26,2021 by agreement for status FTR		
10/26/2021	Case continued to 11/22/21 by agreement for status conference at 9:30 a.m. FTR (Sullivan, J.)		
11/23/2021	Defendants presence waived. Case continued to 1/13/22 by agreement at 9:30 a.m. for status. FTR (Sullivan,J.)		
01/13/2022	Not held Commonwealth unavailable. Case continued to 1/27/22 by agreement for status. FTR		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Hon. Brian A Davis, Presiding		
01/27/2022	Event Result:: Conference to Review Status scheduled on: 01/27/2022 09:30 AM Has been: Held as Scheduled Comments: Defendant's presence waived this day. Case continued by agreement until 2/24/22 at 9:30 for status and possible lobby conference. (FTR) Hon. Brian A Davis, Presiding		
02/23/2022	Event Result:: Conference to Review Status scheduled on: 02/24/2022 09:30 AM Has been: Rescheduled For the following reason: Request of Commonwealth Hon. Brian A Davis, Presiding		
03/10/2022	Event Result:: Conference to Review Status scheduled on: 03/10/2022 09:30 AM Has been: Held as Scheduled. Deft presence waived. Case continued by agreement to 05/25/22 at 10:30AM in 1st session for Motion Hearing on Motion to Amend and Motion to Sever. Case continued to 08/25/22 at 2pm for Final Trial Conference - 2nd session. Case continued by agreement to 09/06/22 at 9:00AM for Jury Trial in 2nd session. Comments: FTR Hon. Brian A Davis, Presiding		
03/10/2022	Scheduled: Event: Jury Trial Date: 09/06/2022 Time: 09:00 AM Result: Rescheduled		
03/28/2022	Defendant 's Motion for relief from joinder	14	
05/25/2022	Defendant appears in court. Case continued by agreement until 7/8/22 for hearing on motions. (Squires-Lee,J)(FTR)		Image
06/03/2022	Commonwealth 's Motion in limine to admit opinion testimony from Sean P Plumer CFI, CFEI Senior Fire Consultant Fire and Explosion Division	15	
06/03/2022	Commonwealth 's Motion in limine to admit opinion testimony from MA State Trooper Thomas Berteletti	16	
06/03/2022	Commonwealth 's Motion to admit statements of the defendants	17	
06/03/2022	Commonwealth 's Motion in limine to admit statements made by Gina Louis as excited utterances	18	
06/03/2022	Plymouth County District Attorney's Memorandum in opposition to defendant's motion to sever	19	
08/04/2022	Plymouth County District Attorney's Memorandum in opposition to to defendant's motion to sever based on the fact that both defendants conspired to burn their foster mother's home to the ground after she refused to give up custody of their youngest sibling	20	 Image
08/04/2022	Endorsement on Motion for relief from joinder, (#14.0): DENIED upon review, the court finds that the co-defendants defenses in this case are in factual and legal alignment, neither antiagnostic to nor irreconcilable with other. The co-defendants are charged with conspiring to commit and then carrying out a vengeance-motivated arson and the court determines that joinder at trial is consistent with the terms of Rule 9, the principles of Bruton and its progeny and the larger interests of justice. If and to the extent certain evidence or statements only incriminate one defendant, proper limiting instructions will mitigate any possible prejudice copies sent Aug 4,2022 Judge: Gordon, Hon. Robert B		 Image
08/10/2022	Attorney Joshua David Werner, Esq.'s motion to withdraw as counsel of record for party Applies To: Werner, Esq., Joshua David (Attorney) on behalf of Jironvil, Lucnalie (Defendant)	21	 Image
08/11/2022	Event Result:: Motion Hearing scheduled on: 08/11/2022 02:00 PM Has been: Held as Scheduled. After hearing, no action taken on the motion to withdraw. Ms. Jironvil was present at the hearing and advised of the next date in open court. Hon. William F Sullivan, Presiding		
08/11/2022	Endorsement on Motion to withdraw, (#21.0): No Action Taken After hearing defendant was present at the hearing and advised in open court of the next date copies sent Aug 15,2022		 Image
08/16/2022	Criminal Records received from Brockton Juvenile court		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/24/2022	Joint Pre-Trial Memorandum filed: Applies To: Plymouth County District Attorney (Prosecutor)	22	 Image
08/24/2022	Commonwealth 's Motion in limine to introduce audio recordings of Jonathan Jironvil testifying at the petition for guardianship hearing in Brockton juvenile court and the docket history for the guardianship hearing	23	 Image
08/24/2022	Commonwealth 's Motion in limine to introduce the following business records at trial	24	 Image
08/24/2022	Defendant 's Motion for Rule 17 order and subpoena for Department of Children and Family Records	25	 Image
08/25/2022	Event Result:: Final Trial Conference scheduled on: 08/25/2022 02:00 PM Has been: Held as Scheduled Comments: 1. Case is called for final pretrial and both defense counsel report not ready for trial. They move to continue the trial date. Commonwealth reports ready for trial and opposes the defendant's motion to continue. After hearing on the issue of continuance, the court continues the trial at defendants' request and over the objection of the Commonwealth to 11/28/22 at 9:00 with Final Trial Conference at 11/2/22 at 2:00. 2. Court orders all motions in limine along with all oppositions to be filed no later than 10/27/22 by end of business. 3. Court refers the issue of the R.17 motion pending filed by Attorney Werner on behalf of Lucnalie Jironvil but applicable to both defendants) to Judge Sullivan. Counsel are today requested to obtain a hearing date next week from Judge Sullivan. Hon. Robert B Gordon, Presiding		
08/25/2022	Event Result:: Jury Trial scheduled on: 09/06/2022 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Hon. Robert B Gordon, Presiding		
08/25/2022	Scheduled: Event: Jury Trial Date: 11/28/2022 Time: 09:00 AM Result: Canceled		
08/30/2022	Event Result:: Motion Hearing scheduled on: 08/30/2022 02:00 PM Has been: Held as Scheduled Hon. William F Sullivan, Presiding		
08/31/2022	Endorsement on Motion for a Rule 17 order and subpoena for Department of Children and Family Records, (#25.0): DENIED (see decision and order) copies sent Aug 31,2022 Judge: Sullivan, Hon. William F		 Image
08/31/2022	ORDER: and Decision on defendant's motion for Rule 17 materials from Department of Children and Family; Denied copies sent Aug 31,2022 Judge: Sullivan, Hon. William F	26	 Image
10/31/2022	Attorney appearance On this date Alexander C Zane, Esq. added as Attorney for the Commonwealth for Prosecutor Plymouth County District Attorney		
10/31/2022	Defendant 's Motion in Limine prohibit the Commonwealth from Introducing any and all Prior Convictions of the Defendant.	26.1	 Image
10/31/2022	Defendant 's Motion in Limine Prohibit the Commonwealth from using the following evidence against this defendant in the case and as a result be Prohibited from introducing it in the case in chief.	26.2	 Image
10/31/2022	Defendant 's Motion for Examination of Jurors And Questions to be asked in individual Voir Dire of Prospective Jurors.	26.3	 Image
10/31/2022	Defendant 's Motion in Limine Instruct the Commonwealth and their Witnesses to refrain from referring to any witnesses as " Victims" during the course of this case.	26.4	 Image
10/31/2022	Defendant 's Motion to Sanitize The Defendant's Statement	26.5	 Image
10/31/2022	Defendant 's Motion in Limine Prohibit the Commonwealth from using the testimony of the co-defendant made at a juvenile proceeding into evidence against this defendant.	26.6	 Image
11/01/2022	Defendant 's Motion for relief from prejudicial joinder	27	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/01/2022	Defendant 's Motion in limine	28	
11/03/2022	Event Result:: Final Pre-Trial Conference scheduled on: 11/03/2022 02:00 PM Has been: Held as Scheduled Hon. Robert B Gordon, Presiding		Image
11/03/2022	Endorsement on Motion in limine to Admit Opinion Testimony from MA State Trooper David Crouse, (#5.0): ALLOWED Subject to the Commonwealth laying a proper foundation for expert testimony (Mass G. Evid. s 702)		 Image
11/03/2022	Endorsement on Motion in limine to Admit Statements Made by Jonathan Jironvil at the Brockton Juvenile Court Guardianship Hearing, (#6.0): ALLOWED The subject statements are not offered for the truth of the matters asserted therein (but instead as evidence of the Defendant's state of mind and motivation) And thus fall outside the rule of hearsay exclusion. (Mass G. Evid. S 802) The statements are likewise statements of a party-opponent and thus non-hearsay under Mass. G. Evid. S 801 (d) (2)		
11/03/2022	Endorsement on Motion in limine to Admit In-Court Identification Pursuant to Commonwealth vs. Crayton, (#7.0): ALLOWED Allowed, good reason under Crayton having been demonstrated Judge: Gordon, Hon. Robert B		
11/03/2022	Endorsement on Motion in limine to Admit Electronic Call Logs of Jonathan and Lucnalie Jironvil at Trial, (#8.0): No Action Taken Recognizing the T-Mobile records are relevant, the Court will admit them into evidence only if confirming circumstances at trial demonstrate the authenticity of such records per Comm. Vs. Purdy. Judge: Gordon, Hon. Robert B		
11/03/2022	Endorsement on Motion in limine to Admit Evidence of the Protracted Custody Dispute Regarding Minor Jironvil Sibling, (#9.0): ALLOWED The prior bad acts evidence to be offered reflect the increasing hostile and volatile custody dispute which the Commonwealth theories supplies the motive for this crime. The evidence is thus highly probative of a material issue - the Defendants' state of mind, is not offered for any impermissible propensity purpose (the jury to be given a limiting instruction to this effect) and its evidentiary value in establishing the claimed motivational context for the arson substantially outweighs any risk of unfair prejudice to the Defendants.		
11/03/2022	Endorsement on Motion in limine to Admit Opinion Testimony from Sean P. Plumer, CFI, CFEI Senior Fire Consultant Fire and Explosion Division, (#15.0): ALLOWED subject to the Commonwealth laying a proper foundation for the admission of expert testimony and opinion. (Mass. G. Evid 702) Judge: Gordon, Hon. Robert B		
11/03/2022	Endorsement on Motion in limine to Admit Opinion Testimony from MA State Trooper Thomas Berteletti, (#16.0): ALLOWED Subject to the Commonwealth laying the proper foundation for admission of expert testimony and opinion. (Mass. G. Evid S. 702) Judge: Gordon, Hon. Robert B		
11/03/2022	Endorsement on Motion in limine to Admit Statements of the Defendants, (#17.0): ALLOWED The statements of the Defendants are relevant to their state of mind, definitionally non-hearsay under Mass. G. Evid. 801 (2)(d) and may be admitted into evidence subject to the laying of a proper foundation and the giving of a Humane Practices instruction. Judge: Gordon, Hon. Robert B		
11/03/2022	Endorsement on Motion in limine to Admit States made by Gina Louis and excited utterances, (#18.0): No Action Taken Prior to Herve Louis taking the witness stand at trial, the Court will voir dire the declarant to determine if the statements attributed to Gina Louis qualify for the spontaneous utterance exception to the hearsay rule (Mass. G. Evid 803 (2) and if their admission is consistent with the Constitutional requirements of the Sixth Amendment's Confrontation Clause Judge: Gordon, Hon. Robert B		
11/03/2022	Endorsement on Motion in limine to introduce the audio recordings of Jonathan Jironvil testifying at the petition for guardianship hearing on Brockton Juvenile Court and the docket history for the guardianship hearing, (#23.0): ALLOWED The evidence is probative of the Defendant's state of mind and motivation; and, as a sealed audio recording of a court proceeding, it is self-authenticating (see Mass. G. Evid. 902 (a)) Judge: Gordon, Hon. Robert B		
11/03/2022	Endorsement on Motion in limine to introduce the following business records at trial, (#24.0): DENIED Although the Court acknowledges the evident relevance of these documents, failing stipulation the		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Commonwealth will need to lay the required foundation for the admission thereof as authentic business records. Judge: Gordon, Hon. Robert B		
11/03/2022	Commonwealth 's Motion in limine to admit the substitute testimony of Massachusetts State Trooper Brian Tully regarding the location data associated with the Defendants' cellular phones; filed and ALLOWED without opposition	29	 Image
11/03/2022	Endorsement on Motion in limine (2), (#26.1): No Action Taken The Court will any proffered prior conditions to determine if their admission is consistent with GL c. 233 s 21 and the principles expounded in Mass G. Evid s 609 (a) Judge: Gordon, Hon. Robert B		
11/03/2022	Endorsement on Motion in limine , (#26.2): No Action Taken It is the Commonwealth's theory that the co-defendants were joint venturers in a shared arson intended to thwart the victim's attempt to retain custody of their younger sister. If the preponderant evidence permits a reasonable influence of joint venture, the statements are properly admitted against both defendants in accordance with Mass. G. Evid. s. 801 (d) (2) (E). Such statements would have been made during the course of the joint venture and bear relevantly on the defendants' shared motive in connection with same. If the preponderant evidence does not permit a reasonable inference of joint venture, the court will instruct the jury that the subject statements may only be considered in their evaluation of the indictments against Jonathan Jironvil. The court will make this threshold assessment of the joint venture evidence (not to include statements themselves) in accordance with Mass. G. Evid. s. 104 (a), and will do so in a voir dire conducted outside the hearing of the jury prior to the offering of the subject statements Judge: Gordon, Hon. Robert B		 Image
11/03/2022	Endorsement on Motion for examination of jurors and questions to be asked in individual voir dire of prospective jurors, (#26.3): ALLOWED as follows: The court will permit attorney participation in the individual voir dire phase of jury selection as and to the extent provided for in the impanelment statement previously circulated to counsel. The court observes that its approved questions already make fair and adequate provision for inquiry into the topics referenced in this motion.		 Image
11/03/2022	Endorsement on Motion in limine , (#26.4): ALLOWED The Commonwealth is directed to instruct its witnesses to refer to third parties by their names or as the "alleged victims" Judge: Gordon, Hon. Robert B		 Image
11/03/2022	Endorsement on Motion to sanitize the defendant's statements, (#26.5): No Action Taken The court is unable to discern what information or language is requested to be "sanitized". The court encourages counsel to address these matters prior to the start of trial, and then bring any reasonably particularized disagreements to the undersigned for resolution Judge: Gordon, Hon. Robert B		 Image
11/03/2022	Endorsement on Motion in limine , (#26.6): DENIED The constitutional principle addressed in Care and Protection of MC turned on the interest of parents in their minor children, and the Hobson's choice they face when deciding whether to testify in a juvenile court proceeding affecting such children- testimony that could then be used against them in their own criminal trial. The court finds that this principle does not apply in the case at bar- where two non-parent siblings sought to disturb the guardian relationship among their sister's foster-parent, the child and DCF in a juvenile court proceeding of their own investigation. This was not a Hobson's choice thrust upon them, and their statements in such proceeding are further considered as probative of their intentions relative to these counter-parties		 Image
11/03/2022	Endorsement on Motion for relief from prejudicial joinder, (#27.0): DENIED The defendant's renewed motion to sever is denied. The evidence to be offered is plainly relevant to the defendants' intentions and state of mind in their assented joint venture. No unfair prejudice will inure to either defendant if they are tried together as joint venturers. Neither defendant makes statements that incriminate the other, and neither intends to assert a defense that is either irreconcilable with or antagonistic to a defense of the other. To the contrary, as a good deal of evidence yokes these defendants together, the defendants have put forward the identical defense of innocence. The cases against them are properly joined under Mass. R. Crim. P. 9. Judge: Gordon, Hon. Robert B		 Image
11/03/2022	Endorsement on Motion in limine , (#28.0): DENIED This motion is duplicative of paper #26.2 Judge: Gordon, Hon. Robert B		 Image
11/03/2022	Defendant 's Motion in limine filed and DENIED for the reasons stated in open court (Gordon, J.)	30	 Image
11/21/2022	Attorney appearance On this date Bryan Owens, Esq. added as Private Counsel for Defendant Lucnalie Jironvil	31	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/21/2022	Defendant 's Motion for Discovery and inspection	32	
11/22/2022	Event Result:: Jury Trial scheduled on: 11/28/2022 09:00 AM Has been: Canceled For the following reason: Request of Defendant Hon. Robert B Gordon, Presiding		Image
11/22/2022	Event Result:: Motion Hearing scheduled on: 11/22/2022 12:00 PM Has been: Held as Scheduled Comments: After hearing the defendant's motion to continue is allowed. Rule 36 waived. Atty. Werner is permitted to withdraw. Matter is scheduled for Trial 3/13/23, for Final Pretrial 3/2/23 at 2:00. All motions must be filed by end of business 12/31/22. Hearing on all motions is scheduled for 1/13/23 at 9:00 in 2nd Criminal. Hon. Robert B Gordon, Presiding		
11/22/2022	Scheduled: Event: Jury Trial Date: 03/13/2023 Time: 09:00 AM Result: Rescheduled		
11/22/2022	Defendant 's Joint Motion To Continue Trial ALLOWED after hearing. R. 36 waived. (Gordon, J) (FTR)	33	 Image
11/22/2022	Attorney Joshua David Werner, Esq.'s motion to withdraw as counsel of record for party ALLOWED after hearing. (Gordon, J) (FTR) Applies To: Werner, Esq., Joshua David (Attorney) on behalf of Jironvil, Lucnalie (Defendant)	34	 Image
11/22/2022	Attorney appearance On this date Joshua David Werner, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Lucnalie Jironvil		
01/06/2023	Defendant Joshua David Werner, Esq., Bryan Owens, Esq.'s Joint Motion to continue trial is Denied. January 9, 2023. Hallal J.	35	 Image
01/11/2023	Defendant 's Joint Motion to continue hearing Allowed, motion hearing continued to January 27, 2023 at 9:30AM (Sullivan,J) (see 20cr12)		
01/11/2023	Event Result:: Motion Hearing scheduled on: 01/13/2023 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Hon. William F Sullivan, Presiding		
01/27/2023	Defendant 's Joint Motion to continue; Allowed Case continued to February 13, 2023 at 2pm by agreement for filing motion to dismiss and scheduling all parties to appear in person ftr		
02/13/2023	Event Result:: Conference to Review Status scheduled on: 02/13/2023 02:00 PM Has been: Rescheduled For the following reason: Attorney on another trial Hon. William F Sullivan, Presiding		
02/24/2023	Event Result:: Conference to Review Status scheduled on: 02/27/2023 02:00 PM Has been: Rescheduled For the following reason: Request of Defendant Hon. William F Sullivan, Presiding		
03/02/2023	Case continued to 04/05/2023 at 3:00 p.m. for O'Dell /McCarthy Motion. PTC on 05/12/2023 at 2:00 p.m. Trial Scheduled on 05/22/2023 at 9:00 a.m. All events being held in the 2nd Session. All Motions in Limine, Joint Pre Trial Motion an witness List due 5 Days prior to Final Pre Trial Conference. (Sullivan, J) (FTR)		
03/03/2023	The following form was generated: Notice to Appear for Pre Trial Conference Sent On: 03/03/2023 10:37:37	36	
03/03/2023	Scheduled: Event: Jury Trial Date: 05/22/2023 Time: 02:00 PM Result: Held as Scheduled	37	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/31/2023	Docket Note: Counsel not present for 2pm call- counsel presently on trial in New Bedford Superior Court Case continued to April 20, 2023 at 3pm for motion to dismiss		
04/05/2023	case called at 11AM for motion hearing Attorney not present Case continued to 2pm for Atty's appearance Defendant's presence waived for 2pm hearing FTR		
04/20/2023	After hearing on defendant's motion to dismiss taken under advisement Case continue to May 12, 2023 at 2pm for final pre-trial conference FTR		
05/01/2023	MEMORANDUM & ORDER: AND DECISION on defendants motion to dismiss; The defendants' Motion to Dismiss is DENIED (see pld#43 motion to dismiss in co-deft 20CR12) copies sent May 2,2023 Judge: Sullivan, Hon. William F	38	 Image
05/09/2023	Commonwealth 's Request to renew prior motions in limine	39	 Image
05/09/2023	Commonwealth's proposed jury questions	40	 Image
05/11/2023	Defendant 's Motion In Opposition to the Commonwealth's Motion to Admit Electronic Text Messages Sent by Lucnali Jironvil to Trooper Thomas Berteletti	41	 Image
05/12/2023	Defendant 's Joint Pretrial Memorandum	42	 Image
05/12/2023	Defendant 's Motion To Reconsider Commonwealth's Motion In Limine To Admit Statements made By Jonathan Jirvonil At The Brockton Juvenile Court Guardianship Hearing And Defendant's Motion In Limine Regarding Mr. Jironvil's Testimony At The Guardianship Hearing And Other Evidence Related To Defendant's Actions To Show Alleged Strife And Contention Caused By Family Court Proceedings	43	 Image
05/12/2023	Commonwealth 's Motion To Admit Electronic Text Messages Sent By Lucnalie Jironvil To Trooper Thomas Berteletti	44	 Image
05/12/2023	Event Result:: Pre-Trial Conference scheduled on: 05/12/2023 02:00 PM Has been: Held as Scheduled Hon. William F Sullivan, Presiding		
05/22/2023	Jury of 14 members impaneled not sworn FTR		
05/23/2023	Trial continues before Sullivan,J and jury ftr		
05/23/2023	List of jurors filed. jury of 14 members impaneled and sworn	45	
05/23/2023	Defendant 's Motion to exclude expert testimony from Massachusetts State Trooper David Crose (see orig in 20CR12 P#58)		
05/23/2023	Defendant 's Motion to exclude the opinion testimony and or conduct vior dire of Attorney Eric Degoosh Dimarzio (see orig in 20CR12 P#59)		
05/23/2023	Defendant 's Motion to exclude the opinion testimony of Matthew Morrison (see orig in 20CR12 P#60)		
05/23/2023	Defendant 's Motion to exclude the opinion testimony and or conduct voir dire Attorney Eric Degoosh Dimarzio (see orig in 20CR12 P#61)		
05/23/2023	Defendant 's Motion to conduct voir dire of Trooper Brian Tully (see orig in 20CR12 P#62)		
05/24/2023	Trial continues before Sullivan,J and jury ftr		
05/25/2023	Trial continues before Sullivan,J and jury ftr		
05/26/2023	Trial continues before Sullivan,J and jury ftr		
05/30/2023	Trial continues before Sullivan,J and jury ftr		
05/31/2023	After Voir dire of witness T. Bertoletti, the Court finds that the witness may offer his opinion (Sullivan,J) FTR Result: Held as Scheduled		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
05/31/2023	Trial continues before Sullivan,J and jury ftr Result: Held as Scheduled		
05/31/2023	Defendant 's motion in limine to permit defense counsel to describe reasonable doubt during defense closing (see orig in 20cr12 P#63)		
05/31/2023	After voir dire of witness B. Tulley, the court finds the witness may testify as to his review of records (Sullivan,J) FTR		
05/31/2023	Docket Note: After hearing, text and phone calls to Lucnalie Jironvil excluded. Phone calls and discussion with Jonathan Jironvil excluded (Sullivan,J) FTR		
05/31/2023	Endorsement on Motion in opposition to the Commonwealth's motion to admit Electronic text messages sent by Lucnali Jironvil to Trooper Berteletti, (#0.0): DENIED see P#55 in 20CR12 (Sullivan,J) Judge: Sullivan, Hon. William F		
05/31/2023	Endorsement on Motion in opposition to the Commonwealth's motion to admit electronic text messages sent by Lucnali Jironvil to Trooper Thomas Berteletti, (#0.0): DENIED see P #55 in 20CR12 (Sullivan,J) Judge: Sullivan, Hon. William F		
05/31/2023	Endorsement on Motion to reconsider Commonwealth's motion in limine to admit statements made by Jonathan Jirvonil at the Brockton Juvenile Court guardianship hearing and defendant's motion in limine regarding Mr Jironvil's testimony at the guardianship hearing and other evidence related to defendants' actions to show alleged strife and contention caused by family court proceedings, (#43.0): DENIED (Sullivan,J) Judge: Sullivan, Hon. William F		
06/01/2023	Event Result:: Jury Trial scheduled on: 06/01/2023 09:00 AM Has been: Held as Scheduled Hon. William F Sullivan, Presiding		
06/01/2023	Defendant oral motion for directed verdict, After hearing DENIED (Sullivan,J) FTR		
06/02/2023	Scheduled: Event: Jury Trial Date: 06/02/2023 Time: 09:00 AM Result: Held as Scheduled		
06/02/2023	Offense Disposition:: Charge #1 ARSON OF DWELLING HOUSE c266 §1 On: 06/02/2023 Judge: Hon. William F Sullivan By: Jury Trial Guilty Verdict Charge #2 ASSAULT TO MURDER c265 §15 265/15/A-0 On: 06/02/2023 Judge: Hon. William F Sullivan By: Jury Trial Guilty Verdict Charge #3 ASSAULT TO MURDER c265 §15 265/15/A-0 On: 06/02/2023 Judge: Hon. William F Sullivan By: Jury Trial Guilty Verdict Charge #4 ASSAULT TO MURDER c265 §15 265/15/A-0 On: 06/02/2023 Judge: Hon. William F Sullivan By: Jury Trial Guilty Verdict Charge #5 DESTRUCTION OF PROPERTY +\$1200, MALICIOUS c266 §127 On: 06/02/2023 Judge: Hon. William F Sullivan By: Jury Trial Guilty Verdict		
06/02/2023	Case continued to June 22,2023 @ 2:00PM for sentencing (Sullivan,J) FTR		
06/02/2023	The defendant\petitioner is committed without bail for the following reason: Per Order of the Court.	46	
06/02/2023	Verdict affirmed, verdict slip filed	47	
06/08/2023	Habeas Corpus for defendant issued to Plymouth County House of Correction returnable for 06/22/2023 02:00 PM Hearing for Sentence Imposition. Transport defendant to court for in person hearing	48	
06/20/2023	Event Result:: Hearing for Sentence Imposition scheduled on: 06/22/2023 02:00 PM Has been: Not Held For the following reason: Joint request of parties Hon. William F Sullivan, Presiding		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
06/20/2023	Habeas Corpus for defendant issued to Suffolk House of Correction (South Bay) returnable for 06/26/2023 12:00 PM Hearing for Sentence Imposition. Please be here by 11:00am	49	
06/26/2023	Correction Date: 06/26/2023 Judge: Hon. William F Sullivan Charge #: 1 ARSON OF DWELLING HOUSE c266 §1 State Prison Sentence Not Less Than: 8 Years, 0 Months, 0 Days Not More Than: 10 Years, 0 Months, 0 Days Charge #: 2 ASSAULT TO MURDER c265 §15 State Prison Sentence Not Less Than: 8 Years, 0 Months, 0 Days Not More Than: 10 Years, 0 Months, 0 Days Served Concurrently Charge # 1 Charge #: 3 ASSAULT TO MURDER c265 §15 State Prison Sentence Not Less Than: 8 Years, 0 Months, 0 Days Not More Than: 10 Years, 0 Months, 0 Days Served Concurrently Charge # 1 Charge #: 4 ASSAULT TO MURDER c265 §15 State Prison Sentence Not Less Than: 8 Years, 0 Months, 0 Days Not More Than: 10 Years, 0 Months, 0 Days Served Concurrently Charge # 1 Charge #: 5 DESTRUCTION OF PROPERTY +\$1200, MALICIOUS c266 §127 State Prison Sentence Not Less Than: 8 Years, 0 Months, 0 Days Not More Than: 10 Years, 0 Months, 0 Days Served Concurrently Charge # 1 Committed to Souza Baranowski Correctional Center Credits 24 Days Further Orders of the Court: Said sentence to be served at MCI Framingham		
06/26/2023	Commonwealth files sentence recommendation	52	
06/26/2023	Issued on this date: Mittimus for Sentence (All Charges) Sent On: 06/26/2023 14:50:51	50	
06/26/2023	Event Result:: Hearing for Sentence Imposition scheduled on: 06/26/2023 02:00 PM Has been: Held as Scheduled Hon. William F Sullivan, Presiding		
06/26/2023	Defendant 's Motion to be declared indigent	51	
06/26/2023	Notice of appeal filed. Applies To: Jironvil, Lucnalie (Defendant)	53	 
06/26/2023	Defendant 's Motion to appoint appellate counsel Applies To: Jironvil, Lucnalie (Defendant)	54	
06/26/2023	Other 's Motion to withdraw and to assign appellate counsel Applies To: Owens, Esq., Bryan (Attorney) on behalf of Jironvil, Lucnalie (Defendant)	55	 
11/13/2023	Attorney appearance On this date David M Osborne, Esq. added as Private Counsel for Defendant Lucnalie Jironvil	56	 
02/15/2024	CD of Transcript of 11/03/2022 02:00 PM Final Pre-Trial Conference, 04/20/2023 03:00 PM Motion Hearing, 05/12/2023 02:00 PM Pre-Trial Conference, 05/22/2023 09:00 AM Jury Trial, 05/23/2023 09:00 AM Jury Trial, 05/24/2023 09:00 AM Jury Trial, 05/25/2023 09:00 AM Jury Trial, 05/26/2023 09:00 AM Jury Trial, 05/30/2023 09:00 AM Jury Trial, 05/31/2023 09:00 AM Jury Trial, 06/01/2023 09:00 AM Jury Trial, 06/02/2023 09:00 AM Jury Trial, 06/26/2023 02:00 PM Hearing for Sentence Imposition received from Christine Fiore.		
03/25/2024	One (1) copy of docket entries, original copy of transcript, one (1) copy of notice of assembly issued to parties, one (1) copy of exhibit list and list of documents, and copy of the notice of appeal, each transmitted electronically to clerk of appellate court	57	 
03/25/2024	Notice to Clerk of the Appeals Court of Assembly of Record	58	
03/25/2024	Notice of assembly of record sent to Counsel	59	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/27/2024	Appeal entered in Appeals Court on 03/26/2024 docket number 2024-P-0333	60	
04/12/2024	Defendant 's Motion for expert funds pursuant to Mass R Cr P 30(c)(5)(case given to Judge Sullivan)	61	
04/16/2024	Endorsement on Motion expert funds pursuant to Mass R Cr P 30(c)(5, (#61.0): ALLOWED Judge: Sullivan, Hon. William F		 
09/03/2024	Motion to unseal search warrant material; Filed and Allowed copies sent Sept 9,2024		
09/20/2024	Notice of docket entry received from Appeals Court RE#6: The defendant is granted leave to file, and the Superior Court is granted leave to consider, a motion for new trial. Appellate proceedings stayed to 10/21/2024. Status report due then concerning whether the motion has been filed in the Superior Court.	62	 
10/24/2024	Defendant 's Motion for a new trial and request for an evidentiary hearing	63	
10/24/2024	Defendant 's Motion for stay of execution of sentence	64	
10/24/2024	Defendant 's Motion for leave to file impounded pleading	65	
10/31/2024	ORDER: the Commonwealth has until Monday, February 3, 2025 to file it's response to the defendant's motion for a new trial Judge: Sullivan, Hon. William F	66	 
12/02/2024	Endorsement on Motion for stay of execution of sentence, (#64.0): DENIED without prejudice		 
12/02/2024	Endorsement on Motion for leave to file impounded pleading, (#65.0): ALLOWED		
01/02/2025	Notice of docket entry received from Appeals Court Please take note that, with respect to the Motion for stay under M.R.A.P. 6(b) filed for Lucnalie Jironvil by Attorney David Osborne. (Paper #9), on January 2, 2025, the following entry was made on the docket: ORDER: RE#9,13,15: Before me is a motion of the defendant to stay further execution of her sentence pending appeal pursuant to Mass. R. A. P. 6. After a jury trial, the defendant was convicted of one count of arson of a dwelling house under G.L. c. 266, § 1, three counts of assault with intent to murder under G.L. c. 265, § 15, and one count of malicious destruction of property over \$1,200 under G.L. c. 266, § 127. On June 26, 2023, the trial judge sentenced the defendant to five concurrent sentences of eight to ten years in state prison. On October 24, 2024, the defendant filed motions for new trial and for stay of execution under Mass. R. Crim. P. 31(a). The motion for new trial remains pending at this time, but the judge denied the motion to stay without prejudice on December 2, 2024 without conducting a hearing. "When considering the merits of a motion to stay the execution of a sentence, a judge should consider two factors. First is whether the appeal presents 'an issue which is worthy of presentation to an appellate court, one which offers some reasonable possibility of a successful decision in the appeal.' Second, the judge should consider 'the possibility of flight to avoid punishment; potential danger to any other person or to the community; and the likelihood of further criminal acts during the pendency of the appeal.'" <i>Christie v. Commonwealth</i> , 484 Mass. 397, 400 (2020) (internal citations omitted). The defendant bears the burden "to prove both factors by a preponderance of the evidence." <i>Commonwealth v. Kalila</i> , 493 Mass. 636, 642 (2024). In reviewing a trial court judge's denial of a stay, the single justice may either review the judge's ruling for an error of law or abuse of discretion or conduct an independent review of the merits. See <i>Commonwealth v. Nash</i> , 486 Mass. 394, 410 (2020). Where I do not have the benefit of findings in support of the judge's decision to deny the defendant's motion to stay, I consider the motion de novo. See <i>Commonwealth v. Cohen</i> , 456 Mass. 128, 133 (2010). The defendant argues that she has a reasonable likelihood of success on the merits of her motion for new trial based on claims of ineffective assistance of counsel and violations under <i>Brady v. Maryland</i> , 373 U.S. 83 (1963), due to the Commonwealth's failure to disclose exculpatory evidence. Upon close consideration of the record and relevant caselaw, I discern that the defendant has presented "at least one appellate issue of sufficient heft that would give an appellate court pause." See <i>Nash</i> , 486 Mass. at 404. Accordingly, I turn to whether the defendant's release poses a security risk. See <i>Commonwealth v. Charles</i> , 466 Mass. 63, 77 (2013). The defendant contends that her release would not pose a flight or security risk based on her limited criminal record, history of release on personal recognizance, and ties to the community. I have carefully reviewed the entire record before me, including the trial court docket, the defendant's motion and supporting documents, the Commonwealth's response in opposition, and the defendant's reply memorandum. In consideration of the foregoing, I conclude that the defendant has not shown - as she must - that her release would not create a risk of flight to avoid punishment or a security risk to other persons or the community. See <i>Nash</i> , 486 Mass. at 405; <i>Christie</i> , 484 Mass. at 400. Security considerations "involve determinations of fact and the exercise of sound, practical judgment, and common sense." <i>Commonwealth v. Hodge</i> , 380 Mass. 851, 855 (1980). I have considered the defendant's representations regarding her education history, ties to the community, limited criminal record, and prior release on recognizance. See <i>ibid</i> . Furthermore, I recognize and commend the defendant's engagement in self-improvement and educational courses, peer counseling, and work in the kitchen and industries while incarcerated. However, I have also considered the violent nature and seriousness of the crimes for which she was convicted, as it bears on her risk to others, and given appropriate weight to the strength of the evidence against her. See <i>Nash</i> , 486 Mass. at 405. The defendant was convicted of arson of a dwelling house and three counts of assault with intent to murder, as the home was occupied when the fire began. I have further considered the potential danger posed by the defendant's release to the victims and testifying	67	

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	witnesses in this case, particularly in light of the history of hostility and altercations between the defendant and one of the victims in the months leading up to the fire. I recognize that the defendant only defaulted once at the outset of the case but appeared in court consistently thereafter during the four years she was released on recognizance and represented that she was never accused of violating the terms of her release. Nonetheless, the circumstances the defendant now finds herself in are wholly different - the defendant has been incarcerated for more than eighteen months and is presently serving an eight- to-ten-year sentence. While I acknowledge the comprehensive and thoughtful arguments of counsel on behalf of the petitioner in this matter, on the record before me, I find that a stay pending appeal would present nontrivial security concerns, and I further conclude that the defendant has not established that she is entitled to a stay of execution of her sentence. Accordingly, the motion is denied.		
01/09/2025	Lucnalie Jironvil's Memorandum in support of Defendant's motion for a new trial and request for an evidentiary hearing (AMENDED), Amended appendix to memorandum of law in support of Defendant's motion for a new trial and request for an evidentiary hearing	68	 Image
02/20/2025	Habeas Corpus for defendant issued to Suffolk House of Correction (South Bay) returnable for 02/26/2025 03:00 PM Motion Hearing. Please Transport Defendant to Court	69	
02/25/2025	Habeas Corpus for defendant issued to MCI - Framingham returnable for 02/26/2025 03:00 PM Motion Hearing. Please Transport Defendant to Court	70	
02/26/2025	Attorney appearance On this date Julianne Campbell, Esq. added as Attorney for the Commonwealth for Prosecutor Plymouth County District Attorney	71	
02/26/2025	Case called, all parties appear in person. Commonwealth has until 3/20/25 to file their response. Case continued by agreement until 4/16/25. (Sullivan,J)(FTR)		
04/15/2025	Habeas Corpus for defendant issued to MCI - Framingham returnable for 04/16/2025 02:00 PM Motion Hearing. Please Have Defendant Appear Via Zoom ZOOM ID: 161-4544-3995 No Passcode CANCELLED	72	
04/16/2025	Event Result:: Motion Hearing scheduled on: 04/16/2025 02:00 PM Has been: Rescheduled For the following reason: Request of Commonwealth Hon. William F Sullivan, Presiding		
04/25/2025	Habeas Corpus for defendant issued to MCI - Framingham returnable for 04/28/2025 02:00 PM Motion Hearing. Have Defendant Appear Via Zoom ZOOM ID: 161-4061-9325 No Passcode	73	
04/28/2025	Case continued by agreement to 05/21/2025 at 2:00 p.m. for Scheduling. Commonwealth's Opposition due by 05/05/2025. (Sullivan, J) (FTR)		
05/06/2025	Commonwealth 's Consolidated Opposition To The Defendant's Motion For New Trial	74	 Image
05/20/2025	Habeas Corpus for defendant issued to MCI - Framingham returnable for 05/21/2025 02:00 PM Scheduling Conference. Please have Defendant appear via Zoom. ZOOM ID: 161-4544-3995 No Passcode	75	
05/21/2025	Case called before Judge Sullivan. After hearing continued to June 25,2025 at 9:00am for evidentiary hearing motion for new trial (habe in def) FTR		
05/22/2025	Habeas Corpus for defendant issued to MCI - Framingham returnable for 06/25/2025 09:00 AM Motion Hearing. Please be here by 8:30am Applies To: Jironvil, Lucnalie (Defendant)	76	
06/25/2025	Commonwealth oral motion to sequester witnesses; Allowed (Sullivan,J)		
06/25/2025	After hearing on Defendant's motion for a new trial, case continued to June 27, 2025 at 11AM By agreement for further hearing FTR		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/26/2025	Habeas Corpus for defendant issued to MCI - Framingham returnable for 06/27/2025 11:00 AM Motion Hearing. **** Please have Defendant Arrive for 9:00 a.m.****	78	
06/27/2025	Event Result:: Motion Hearing scheduled on: 06/27/2025 11:00 AM Has been: Held as Scheduled Hon. William F Sullivan, Presiding		
06/30/2025	Habeas Corpus for defendant issued to MCI - Framingham returnable for 07/01/2025 09:30 AM Motion Hearing. **** Please have Defendant Arrive for 8:30 a.m.****	79	
07/01/2025	Habeas Corpus for defendant issued to MCI - Framingham returnable for 07/01/2025 09:30 AM Motion Hearing. Please have Defendant appear via Zoom at 11:00 a.m. and at 3:15 p.m. ZOOM ID : 161-4544-3995 No passcode	80	
07/01/2025	Habeas Corpus for defendant issued to MCI - Framingham returnable for 07/02/2025 09:00 AM Motion Hearing. **** Please have Defendant Arrive for 8:30 a.m.****	81	
07/01/2025	Event Result:: Motion Hearing scheduled on: 07/01/2025 09:30 AM Has been: Held as Scheduled Hon. William F Sullivan, Presiding		
07/02/2025	Event Result:: Motion Hearing scheduled on: 07/02/2025 09:00 AM Has been: Held as Scheduled Hon. William F Sullivan, Presiding		
07/14/2025	Habeas Corpus for defendant issued to MCI - Framingham returnable for 07/15/2025 09:30 AM Motion Hearing. **** Please have Defendant Arrive for 8:30 a.m.****	82	
07/15/2025	After hearing, Defendant's motion for a new trial; Taken under advisement Memorandum are to be filed by July 29, 2025 FTR Heard in Civil A		
07/29/2025	Defendant 's Supplemental memorandum in further support of her motion for a new trial(Emailed to Judge Sullivan on July 29,2025)	83	 Image
08/21/2025	Endorsement on Defendant 's Motion for a new trial and request for an evidentiary hearing, (#63.0): DENIED see Findings of fact		
08/21/2025	Findings of Fact and Rulings of Law: and order on defendants' motions for new trial Judge: Sullivan, Hon. William F	84	 Image
08/21/2025	Endorsement on Defendant 's Motion for a new trial and request for an evidentiary hearing, (#63.0): DENIED see findings of fact		
08/25/2025	Notice of appeal filed from denial of motion for a new trial Applies To: Jironvil, Lucnalie (Defendant)	85	 Image
11/18/2025	CD of Transcript of 06/25/2025 09:00 AM Motion Hearing, 06/27/2025 11:00 AM Motion Hearing, 07/01/2025 09:30 AM Motion Hearing, 07/02/2025 09:00 AM Motion Hearing, 07/15/2025 09:30 AM Motion Hearing received from Christine Fiore.		
11/18/2025	Notice of docket entry received from Appeals Court Please take note that, with respect to the Status Report filed for Lucnalie Jironvil by Attorney David Osborne. (Paper #23), on November 18, 2025, the following entry was made on the docket: RE#23: Appellate proceedings stayed to 12/22/2025. Status report due then concerning the trial court's assembly of the record on the notice of appeal from the order denying the motion for new trial, or within 7 days of entry of the related appeal, whichever date is sooner. Upon entry, a motion to consolidate is to be filed on both Appeals Court dockets. *Notice/attest .	86	 Image
12/11/2025	Defendant 's Renewed Motion for Stay of Execution of Sentence (emailed Judge Sullivan)	87	 Image

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
12/19/2025	One (1) copy of docket entries, original copy of transcript, one (1) copy of notice of assembly issued to parties, one (1) copy of exhibit list and list of documents, and copy of the notice of appeal, each transmitted electronically to clerk of appellate court	88	 Image
12/19/2025	Notice to Clerk of the Appeals Court of Assembly of Record	89	
12/19/2025	Notice of assembly of record sent to Counsel	90	
12/22/2025	Appeal entered in Appeals Court on 12/22/2025 docket number 2025-P-1561	91	 Image
12/22/2025	<p>Notice of docket entry received from Appeals Court Please take note that on December 22, 2025, the following entry was made on the docket of the above-referenced case:</p> <p>ORDER: The appeals 2024-P-0333 and 2025-P-1561 are consolidated for briefing and decision. 2024-P-0333 is closed. The assembly of the record package (paper #1), docketing statement(s), briefs, appendices, and transcripts, if any, shall be transferred to 2025-P-1561." All future filings shall refer only to 2025-P-1561. Appellant's brief and appendix in the consolidated appeal is due on or before 02/02/2026. *Notice/attest.</p>	92	 Image  Image

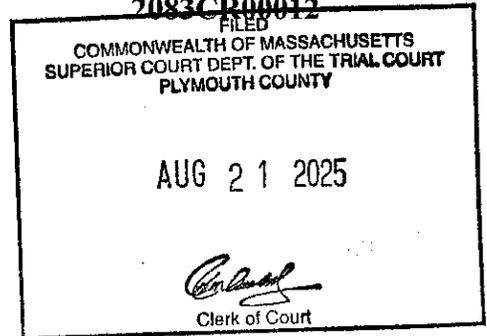
Rec'd
8-21-25

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT

2083CR00012



COMMONWEALTH

vs.

JONATHAN JIRONVIL

PLYMOUTH, ss.

SUPERIOR COURT

2083CR00013

COMMONWEALTH

vs.

LUCNALIE JIRONVIL

FINDINGS OF FACT, RULINGS OF LAW, AND ORDER ON DEFENDANTS' MOTIONS FOR NEW TRIAL

On June 2, 2023, a jury convicted Jonathan Jironvil ("Jonathan") and his sister Lucnalie Jironvil ("Lucnalie") of arson, assault with intent to murder, and malicious destruction of property. For the reasons discussed below, the Defendants' Motions For New Trial are **DENIED.**

BACKGROUND

On January 22, 2020, a Plymouth County Grand Jury indicted Jonathan and Lucnalie with charges of arson, assault with intent to murder, malicious destruction of property, and misleading the police in a criminal investigation. Jonathan was represented at trial by Attorney George Papachristos and Lucnalie was represented at trial by Attorney Bryan Owens.

cc: JC
PL:
DW
8-21-25

Trial began on May 22, 2023 with jury empanelment. During individual voir dire, Assistant District Attorney Alex Zane asked several potential jurors whether they would “have any issues convicting somebody on circumstantial evidence” or “be able to convict somebody on circumstantial evidence alone” or “need or require direct evidence.” ADA Zane exercised peremptory challenges to jurors who seemed hesitant to rely on circumstantial evidence alone.¹ The Court then suggested that ADA Zane not ask about convicting on circumstantial evidence alone, and he changed the form of the question to: “There’s different ways that evidence can be presented. One is direct, and that’s like if somebody comes in and says I saw this, I saw that. And there’s other types of evidence, circumstantial, where conclusions can be drawn. Would you need somebody to testify that they saw a crime committed, or would you be able to look at all the evidence as a whole [or at the big picture]?”

The jury heard the following evidence at trial. On July 18, 2019, around 2:30 a.m., Brockton Police Officer Michael Micciche was dispatched to 66 Sinclair Road in Brockton. Sinclair Road was blocked by multiple fire trucks and the house at 66 Sinclair was engulfed in flames. Officer Micciche spoke to Mary Goodwin, who lived next to 66 Sinclair. Police evacuated the neighborhood until 8:00 or 9:00 a.m. so that firefighters could extinguish the fire.

Mary Goodwin lives at 74 Sinclair Road, directly to the right of 66 Sinclair Road, about twenty feet away. Around 2:30 a.m. on July 18, 2019, she was asleep on the couch in the family room when a loud bang woke her up. She looked out the window and saw 66 Sinclair engulfed in flames. When she called 911, they told her to evacuate her house. The heat from the fire melted all the siding on the left side of 74 Sinclair.

¹Attorney Papachristos exercised a peremptory challenge to Juror Number 1, who stated she would not have any issue convicting on circumstantial evidence alone.

Marie Louis (“Louis”) has lived at 66 Sinclair Road for thirty-five years. In July of 2019, she lived there with her daughter, Gina, and her elderly mother, Ismaelites Gerard (“Gerard”). Louis was a foster mother to fifteen to twenty children who lived with her at 66 Sinclair Road at various times. She was the foster mother to fourteen-year-old Jonathan, fifteen-year-old Lucnalie, and their two-year-old sister Lovely, whom Louis called “my princess.” She took all three siblings into her home so they could stay together. The children called her “Mami” and called Gerard “Grandma” and Jonathan spoke to Gerard in Haitian Creole. Jonathan lived with Louis for four years until he left for college. Her son, Herve, mentored Jonathan and called him “Little Bro.” Jonathan was at the top of his class at Brockton High School and received a full Bill Gates Scholarship to college. However, Jonathan told Louis he did not want to go to college because he wanted to stay and take care of Lovely, so she would not be adopted. Louis responded that he was too smart not to go to college and she would take care of Lovely until he finished college and was settled. Jonathan then went to WPI. For the first two years, he came home most weekends to see Louis, Gerard, and Lovely.

When Jonathan was in his third year at WPI, he told Louis that he wanted custody of Lovely. Louis responded that she could not just give him Lovely because she had legal guardianship and had to report to the court, through DCF, each year. Lovely was delayed in her English and reading and writing and had an IEP. In the summer of 2018, Lovely stayed with Jonathan in Worcester so that he could help her with reading and writing. They visited Louis every weekend. Halfway through the summer, Jonathan told Louis that he was not giving Lovely back and enrolled her in school in Worcester. Louis responded that they needed to go to the Brockton Juvenile Court to deal with the issue.

In December of 2018, they were all together for Gerard's birthday. When they returned to 66 Sinclair Street from a restaurant, two of Jonathan's friends showed up, wearing hoodies. Louis would not allow them in the house because she did not know them. Lucnalie became angry and cursed at Louis for ten to fifteen minutes. They left when Louis threatened to call the police. Louis testified that she was very scared by this incident.

In February of 2019, Louis and Lovely were in church at the Haitian Church in Brockton, when Jonathan and Lucnalie entered the church, grabbed Lovely, and took her outside. Louis then took Lovely back inside. The siblings unexpectedly showed up at church on two other occasions. One time, Jonathan and Lucnalie came to the house, blocked Louis's car as she was leaving for a church meeting, and would not let her leave. Lucnalie cursed and yelled at Louis, telling her she did not know what she was doing. Between October of 2018 and June of 2019, Lucnalie made approximately eight harassing phone calls to Louis. Louis contacted police for help because she was frightened.

On June 14, 2019, the night before Louis was supposed to go to court for the guardianship proceedings, she noticed that the bay window in the front of her house had shattered when several large rocks were thrown through it. There was glass all over the furniture in the family room. In addition, a rock was thrown through the windshield of her car. She called police about this incident. She was so scared that she began sleeping in her closet. Brockton Police Officer Charles Jarrett was dispatched to 66 Sinclair Road. He spoke to Louis, who appeared very upset, and observed damage to the front window of her house and the windshield of her Toyota Highlander. Two weeks later, Louis heard banging downstairs and called police. When they arrived, she came downstairs and saw that a rock had been thrown through the same bay window, which she had a carpenter board up.

Louis testified that when the Juvenile Court matter began, DCF had custody of Lovely, who was in her foster care. Louis told the Juvenile Court that she felt unsafe at 66 Sinclair Road, wanted Lovely to be safe, and was giving up her guardianship. DCF then placed Lovely in a different foster home in Fall River. July 19, 2019 was Lovely's birthday, and Louis and Gina had permission from DCF to visit Lovely in Fall River. They bought gifts and a cake and planned to do so.

Around 2:30 a.m. on July 18, 2019, Gina woke Louis up screaming that there was a fire in the house. It was difficult for them to get Gerard, who was ninety-two and had difficulty walking, out of her bedroom and downstairs. By the time they got out, Gerard's bedroom was in flames, and the house was full of smoke and fire. They stood outside and watched as the house burned down. The right side of the house, where Jonathan's first floor bedroom was located, was on fire first. It took firefighters more than an hour to put out the fire. After the fire, Louis, Gina, and Gerard stayed with a neighbor for a few days, then went to live with a cousin for a while, eventually staying at a hotel. It took two years to rebuild their house at 66 Sinclair Road. Louis testified that she is still in touch with Lovely.

On cross-examination, Louis agreed that the court docket for the guardianship proceedings did not show a scheduled hearing on June 15, 2019. However, Louis stated that her memory of specific dates was not good. After being shown a police report, Louis agreed that she reported the first rock throwing incident on June 17, 2019. She agreed that Jonathan had never physically threatened her and she allowed Lovely to stay with Jonathan at school for a few weeks in 2018. On October 10, 2018, DCF initiated an investigation in which Louis told DCF that Lovely was with her every other weekend and she shared custody with Jonathan. In fact, Lovely had not visited her since August of 2018. Louis admitted that Lovely was having

behavioral problems at home and school and made unfounded accusations against numerous people. She denied telling DCF that her blood pressure was high, and she was done with Lovely. Louis admitted that she cashed \$300 stipend checks for being a foster mother to Lovely even when Lovely was living with Jonathan between July and November of 2018. However, she testified that she mailed the money to Jonathan. She agreed that she withdrew her petition for joint guardianship with Jonathan but could not remember if that occurred a few days after DCF told her she could not keep the \$300 checks if Lovely did not live with her.

Louis testified that DCF wanted Lovely to remain with her, but she felt unsafe because she was being harassed and Jonathan and Lucnalie were making accusations against her, so she gave Lovely back to DCF. Louis denied ever giving up custody of Lovely to Jonathan. Louis testified that it was very painful for her to give up custody of Lovely.

Gina Louis lived at 66 Sinclair Road with her mother in July of 2019. Her bedroom was on the first floor, and you could climb in through the windows from outside. Louis and Gerard's bedrooms were upstairs. In the middle of the night on July 18, she heard a thud and then heard the carbon monoxide detector go off. It usually only went off when there was steam from a hot shower, so she got up to investigate. In the hallway near the back bedroom, she saw that the fire extinguisher was knocked off its hook onto the floor. She opened the door to Jonathan's old bedroom and saw that the bed was on fire and flames were going up the wall. She ran upstairs and yelled to her mother and grandmother that there was a fire. She grabbed her dog but could not find her cat. The house was full of smoke, she could not see, and she had trouble breathing. She got everyone out of the house and called 911 several times because she felt the fire department was not coming fast enough.

Prior to the fire, Jonathan and Lucnalie would show up at 66 Sinclair Road unannounced and harass Gina and Louis. On one occasion, Lucnalie forced her way into the house and demanded to see Lovely. Gina sent Lovely upstairs and told Lucnalie to leave. Lucnalie then physically assaulted Gina, ripping her dress.

Herve Louis (“Herve”) testified that he is Louis’s son and grew up at 66 Sinclair Road. He lived there with Louis from 2015 to 2018. Louis had three foster children at the time: Jonathan, Lucnalie, and Lovely. Jonathan’s bedroom was on the first floor on the right side of the house, and Lucnalie and Lovely shared a bedroom upstairs. Herve testified that he bonded with Jonathan, hanging out and playing video games. He also talked with Lucnalie and was close to Lovely, who was only three when they moved in. He was very excited when Jonathan got a Bill and Melinda Gates Scholarship, a free ride to college. Jonathan continued to come home from WPI on weekends and attend family events. In the summer of 2018, Lovely went to live with Jonathan at college. Herve saw them at a July 4 barbeque and let them hold his newborn son, because they were like family.

Jonathan told Herve that his mother’s dying wish was that he take care of Lovely. A court proceeding was pending involving Louis, Jonathan, and Lucnalie with respect to Lovely’s custody. When Lovely lived with Jonathan in Worcester, Jonathan was concerned that Lovely was academically delayed and wanted to get her in the right programs and schools. Lovely was back at 66 Sinclair Road in the winter of 2019. Jonathan told Herve that Lovely was being abused and he wanted Lovely back, and Herve responded that the family needed to work the situation out. Jonathan angrily demanded that he get Lovely back in two weeks, and Herve informed him that the court proceedings would take longer than two weeks. Jonathan and Herve

had other conversations in which Jonathan stated that he wanted Lovely out of Louis's home and in a group home.

In mid-2019, Herve observed that the front window at 66 Sinclair Road was smashed, Louis's car was damaged, and there were rocks on the roof of the house near Louis's bedroom. Herve purchased a security system of four or five motion-activated cameras and set them to extra-sensitive. A neighbor then installed the cameras around 66 Sinclair. Things were tense at this point and Louis appeared stressed out and uneasy. Herve told Jonathan that he was going about things the wrong way and being hurtful by attacking Louis, and Jonathan replied that he was sorry. On July 3, 2019, Herve received a phone call from a number he did not recognize. When he answered, he recognized Lucnalie's voice and asked her what was up. Lucnalie replied: "I don't know what's up. All I know is that you guys are a bunch of liars." She then accused him of lying about Lovely's location, insisting that he and Louis still had custody of Lovely. Herve told her to check the court records. After the attacks on the house, Louis gave up custody of Lovely, who moved to a group home.

July 18 was Lovely's birthday, and they planned to go visit her. The night before, Herve dropped off many presents at Louis's house. On July 18, he got a call from his sister, Gina. He then tried to call Jonathan's cellphone three times, with each attempt about ten minutes apart. He later went to 66 Sinclair Road and saw that except for the garage, which was black and burned, the entire house had been destroyed by a fire.

On cross-examination, Herve agreed that Jonathan was very concerned about Lovely and loved her a lot. Lovely was having trouble in school and as she became a teen, was a lot for Louis to handle. Herve admitted that he never told the Grand Jury that Jonathan demanded Lovely back in two weeks. Herve testified that at one point, he offered to take Lovely. He told

the Grand Jury that he believed the fire started in the computer room, which had been Jonathan's bedroom.

Steve Rapoza ("Rapoza") is a social worker for Hopewell, a foster care placement agency that places children in DCF custody, supports the placement, and provides any necessary services. Rapoza became involved with Louis in June of 2014, at which time she had three foster children: Jonathan, Lucnalie, and Lovely. He worked with the family for about ten months. He met one-on-one with Jonathan and one-on-one with Lucnalie. Neither sibling reported any concerns. Rapoza did not have to provide support services for Jonathan, who was very independent and goal-oriented and worked with his guidance counselor to get into college. Rapoza would check in with Lovely but DCF managed her case. When Jonathan and Lucnalie turned eighteen, they were able to leave Louis's home if they so chose. In 2014, Lucnalie was eighteen and stayed with Louis under a voluntary placement agreement with DCF. When Jonathan turned eighteen in March of 2015, Hopewell closed out his case.

Doreen Gwodz ("Gwodz") is a social worker for DCF who was assigned to Lovely's case. On October 5, 2018, she spoke to Jonathan about accusations that Louis was mistreating Lovely. Jonathan stated that the allegations were not true and Lovely was known to make up stories. Lovely made unfounded accusations against several people, including Louis.

On October 9, 2018, Gwodz visited Lovely in Worcester when she was living with Jonathan. Gwodz asked if Jonathan had written permission from Louis for this arrangement and Jonathan said he did not. He did not have health insurance for Lovely at that time but was trying to use DCF services to get her on MassHealth. Lovely was going to school but no longer had services with a therapist.

Jonathan was scheduled to go to court on October 29, 2018 to obtain shared guardianship of Lovely. On October 10, 2018, Gwodz told Louis that if Lovely was not living with her, it was fraud to cash the stipend checks. Gwodz had another conversation with Louis about the stipend checks on October 19. On October 22, 2018, Gwodz called Jonathan to inform him that Louis had decided not to share Lovely's guardianship with him. Jonathan was surprised and upset. Later that day, Gwodz spoke to Lucnalie on the phone and Lucnalie asked if they could patch in Jonathan, which they did. Lucnalie passionately stated that she wanted Jonathan to have custody, and she was not moving backward, she was only moving forward. Jonathan said he would fight Louis in court because he did not want Lovely to go back there.

Guyahsa Barthelemy ("Barthelemy") works for DCF in Brockton. In 2018-2019, she was involved in the guardianship petition with respect to Lovely. She made a home visit with Jonathan in Worcester. He was very upset and stated that he wanted to adopt Lovely. Barthelemy told him that siblings cannot adopt each other in Massachusetts, and they discussed guardianship. She suggested that he spend time with Lovely in the community to help her with her studies, but Jonathan was adamant that he wanted to adopt her. Jonathan called Louis a bitch and refused to work with her, insisting on unsupervised visits with Lovely. He raised his voice and Barthelemy ended the visit. Jonathan and Lucnalie told Barthelemy on several occasions that they believed Louis and Gina were physically abusive to Lovely, but Barthelemy never observed any problem. The siblings appeared at Barthelemy's office two or three times unannounced to discuss Lovely.

Barthelemy was at the guardianship hearing on a Monday in July when Louis relinquished guardianship and the fire at 66 Sinclair was that Thursday, Lovely's birthday. After the guardianship hearing, Barthelemy returned to her office. In the parking lot, Jonathan,

Lucnalie, and a cousin who was visiting from New York demanded in a combative manner to talk to her about Lovely's placement. Jonathan wanted DCF to place Lovely with the cousin, which would require certain procedures under the Interstate Compact Act. Barthelemy repeatedly told them that she could not disclose Lovely's placement, which was the Star program in New Bedford. Jonathan and Lucnalie then spoke to her supervisor because she felt uncomfortable with them.

On cross-examination, Barthelemy testified that she was appointed by the Brockton Juvenile Court to assess Lovely's safety and act as a mediator to find a way for Jonathan to visit Lovely. Jonathan and Lucnalie's mother died giving birth to Lovely and that their father had mental health issues and was not in the picture. Barthelemy agreed that Lovely was the only immediate family member they had left. She testified that she did not consider a kinship placement for Lovely because Jonathan was still a college student and he made her uncomfortable during several interactions, although he never threatened her. She believed Louis when Louis stated that Jonathan and Lucnalie were behind the rock-throwing incidents. Louis told her that Jonathan and Lucnalie were showing up at her home, the grocery store, and church. At a July 2 meeting at the DCF office, Lucnalie insisted that Lovely was still at Louis's home.

In 2019, Marcia Andrade Serpa was the principal of the Angelo School in Brockton. Lovely was a fourth grader there in an integrated special education classroom with an IEP. In May of 2019, Lucnalie showed up at the school and tried to get Lovely dismissed, but Serpa would not allow it because Lucnalie was not on the approved list as a caregiver or custodian. Lucnalie was angry and unpleasant during this interaction.

Brockton Fire Chief Brian Nadelli has responded to a few hundred fires in the structure of a building. When he arrived at 66 Sinclair Road, there was fire in almost every window of the

house and the fire had vented through the roof. He determined that firefighters were required to mount a defensive attack of fighting the fire externally before moving into the building. The fire was predominantly in the front of the house. Chief Nadelli struck a second alarm to obtain more staffing and water supply. It took a few hours to fully extinguish the fire. Chief Nadelli was not involved in investigating the origin of the fire and is not a trained arson investigator.

As the firetruck approached 66 Sinclair Road from 500 yards away, Fire Lieutenant Brendan Weeks could see a red glow. The house was fully engulfed in flames but the fire was heaviest on the right side of the house. There was a ten-foot by ten-foot hole burned in the roof. After the Chief called for a second alarm, there were seven fire trucks and twenty-five to thirty firefighters responding to the fire. Lieutenant Weeks was not involved in investigating the fire.

Edwin Williams is a fire investigator for the Brockton Fire Department. On July 18, 2019, around 3:00 a.m., he arrived at 66 Sinclair Road. He learned that there were security cameras and the DVR was inside the living room, so he entered and grabbed it. The DVR was soaking wet from all the water poured on the house to fight the fire. About a week after the fire, he was able to retrieve video footage that showed a car driving by the front of the house at 2:04 a.m. toward Schultz Road. Later footage shows two individuals, a taller one and a shorter one, running away from the house toward Schultz Road seconds before the house bursts into flames. This video footage was played for the jury.

James McDonald Junior ("McDonald") works in the IT Department at Worcester Polytechnic Institute ("WPI"). McDonald testified that each student at WPI receives a unique access card or badge with a magnetic stripe and an embedded radio frequency identification iClass credential to read the card. Students tap their card to gain access to different doors on campus. A central server stores the access information, including the door, the card holder, a

time stamp, and whether access was allowed or denied. The records for July 1, 2019 to August 1, 2019 show that on July 6, 2019 at 12:38 p.m., Jonathan's badge accessed room 203 in Kaven Hall dormitory. There was no access granted on July 18 or July 19. On cross-examination, McDonald agreed that there would be no record of a badge tap if the reader malfunctioned, someone held the door open for the badge holder, or the door were propped open, permitting entry without use of the badge. However, if a reader malfunctioned, the IT Department would get an alert, and a buzzer would sound if a door was propped open for too long. McDonald agreed that if a student was not living on campus over the summer, his badge would show few or no entry taps.

In 2019, Sharon Shevlin-Meade worked for UMass Amherst as the Director of Technology Services for Student Affairs. She monitored the security systems for the residence halls. All students are issued a student ID card called a U-card, which includes the student's name and photograph, a student number, and a unique encoded credit card-like number. The U-card provides access to dorms and other buildings and can be used as a debit card in the dining halls. All U-card transactions are recorded in the university's main server, which has a battery backup if power is lost. U-card records for July 17, 2019 showed that Lucnalie attempted but was denied access to a particular residence hall on campus on that date. She had requested access to the Mount Ida campus and her card was erroneously assigned access to that campus instead. Later the same day, at 4:49 p.m., Lucnalie was granted access to the residence hall after she called and reported the problem. The next time Lucnalie accessed the residence hall was at 4:14 p.m. and again at 8:06 p.m. on July 18, 2019. The final access in the requested records was on July 19, 2019, at 11:51 a.m. The system does not record when a student leaves the building, as there is no need to tap a card to exit.

Alex Contrino (“Contrino”) is the Director of Customer Service for the All Electronic Tolling Department of the Massachusetts Department of Transportation (“MassDOT”). He oversees customer service for the E-ZPass and Pay by Plate programs for state highways. Contrino testified that toll booths in Massachusetts have been replaced by electronic toll gantries that detect E-ZPass transponders and photograph license plates. The gantries are not located at exits but on the main highway. The electronic information is stored on MassDOT servers for seven years. For Pay by Plate toll billing, DOT uses information obtained from the Registry of Motor Vehicles.

Contrino testified about records for license plate 31M730 registered to Lucnalie Jironvil, 60 North Main Street, Apartment 1, in Belchertown, Massachusetts. On July 17, 2019, that vehicle traveled on the Mass Pike, the I-90 corridor from Boston to Springfield, entering in Allston at 7:46 p.m., proceeding west, and exiting in Newton at 7:56 p.m. It then passed gantries at Weston West at 7:56, Warren West at 9:51 p.m., Warren East at 11:18 p.m., and Charlton East at 11:30 p.m. Lucnalie’s vehicle exited I-90 before the next gantry. This route is consistent with Lucnalie picking up Jonathan in Worcester. On July 18, 2019, the same vehicle passed gantries at Weston West at 5:31 a.m., Framingham West at 5:36 a.m., Charlton West at 9:05 a.m., and Ludlow West at 9:35 a.m. On cross-examination, Contrino agreed that there is no way to know who was driving the vehicle.

Hillary Rapson is the custodian of records for T-Mobile. MetroPCS is a prepaid service of T-Mobile. In 2019, T-Mobile provided subscriber records to Trooper Thomas Berteletti for 774-641-0462 (Jonathan) and 617-938-9553 (Lucanalie), including cellphone tower data. Multiple factors go into whether a cellphone ping off a particular tower, such as weather, terrain, and density on the network. The fact that a phone is communicating with a particular tower does

not necessarily mean it is physically located at that tower. A phone can seek a tower from up to two miles away.

The Court then conducted a voir dire of State Police Sergeant Thomas Berteletti outside the presence of the jury. Defense counsel moved to exclude Trooper Berteletti's testimony about the cause and origin of the fire. However, the Court ruled that Berteletti qualified as an expert and his opinion was based on the type of facts and data reasonably relied on by experts who form opinions in the field.

Trooper Berteletti then testified that he is assigned to the Fire Marshal's Office in the Fire and Explosion Investigation Unit and has examined the origin and cause of over one thousand house fires. He is certified by the National Association of Firearm Investigators and the International Association of Arson Investigators. On July 18, 2019, he was called to 66 Sinclair Road around 4:30 a.m. He spoke to Louis and Gina, who stated that she saw a fire on the bed in the back bedroom. Trooper Berteletti observed that heavy fire, smoke, and heat had vented from the first-floor windows, particularly on the right side. From his exterior examination, he concluded that the fire likely started on the right side of the house, which had heavier damage. His interior examination led him to conclude that the fire started in the back bedroom on the first floor, Jonathan's old bedroom.

The four categories for determining the cause of a fire are: natural, like a lightning strike; accidental, like an electrical or mechanical fire; incendiary, which involves an intentional human act; and undetermined. Underneath the bedroom window was a surge protector power strip, but it did not have damage consistent with it being an ignition source. Trooper Berteletti found no accidental or natural sources that might have caused the fire. The suspected point of origin for the fire was the bed, which contained lightweight combustible materials. Based on the

surveillance video of two individuals running away from the area of the house near the bedroom window at the time a sudden flash of fire is visible, Trooper Berteletti concluded that the fire was incendiary. Canines brought to the scene did not alert to any accelerants, but he opined that accelerant is not necessary to set lightweight combustibles on fire; an open flame device is sufficient.

Midway through Trooper Berteletti's direct testimony, ADA Zane informed the Court at sidebar that during the voir dire, he had showed Berteletti a photograph, which Berteletti incorrectly testified was the first-floor bedroom. Berteletti informed ADA Zane after the voir dire that the photograph was in fact a second-floor bedroom. The Court declined to strike Trooper Berteletti's expert opinion based on this mistake but allowed the defense to cross-examine him about it.

Trooper Berteletti testified that when he spoke to Jonathan about the fire, Jonathan stated that he was sleeping in his room in Worcester at the time of the fire and had no reason to be in Brockton on the date of the fire. Berteletti also spoke to Lucnalie, who stated that she was sleeping at UMass Amherst at the time of the fire. She stated that no one had used her Honda Civic and she had no reason to come to Brockton on that date. Trooper Berteletti requested cell site information and call logs for 774-641-0462 (Jonathan) and 617-938-9553 (Lucanalie) and gave the information received to State Police Lieutenant Crouse.

Trooper Berteletti testified that at a prior hearing in the trial, before the break, he identified the photograph marked as trial Exhibit 41 as the room of origin, but it is not; that room is on the second floor directly above the room of origin. He later informed ADA Zane of his mistake. Trooper Berteletti then identified trial Exhibit 43 as the room of origin, noting that the center of the bed had the most significant damage.

On cross-examination, Trooper Berteletti agreed that he had incorrectly identified trial Exhibit 41 as the source of the fire only an hour earlier. He agreed that he was testifying as an expert as to the cause and origin of the fire at 66 Sinclair Road, and accuracy was important because the defendants were on trial for significant crimes and his opinion was being used to decide guilt or innocence. Trooper Berteletti agreed that he gave the same testimony in the voir dire hearing about Exhibit 41 that he gave the jury about Exhibit 43. However, he stated that he based his opinion on what he observed at the scene and not on the photographs. Trooper Berteletti admitted that when asked about the photograph and the cause and origin of the fire, he made a mistake. He agreed that he based his opinion, in part, on Gina's statement about what she observed, and Gina suspected that Jonathan and Lucnalie started the fire. Trooper Berteletti stated that he did not take any samples from the scene because the canine did not detect accelerant. He did not consider that the canine might be wrong. Trooper Berteletti was not aware that on July 23, 2019, Sean Plummer from Louis's insurance company wrote a report concluding that the cause of the fire was a surge protector in the first-floor bedroom. Trooper Berteletti testified that he spoke to Jonathan in the basement of the courthouse in connection with the Grand Jury. Jonathan made statements with his lawyer present. Berteletti stated that his tone was normal, and he was asking Jonathan simple questions, not accusing anyone.

The Court then conducted a voir dire of State Trooper Brian Tully outside the presence of the jury. The Court concluded that Trooper Tully could testify in front of the jury. Trooper Tully testified that he has had 300 hours of training on cellphones and cellphone technology as it relates to criminal investigations. He reviewed call detail information and cell site location information related to this case, as well as a map prepared by retired Lieutenant David Crouse plotting T-Mobile cell towers/antennae based on their longitude and latitude. Trooper Tully

explained that when a cellphone makes a call, it communicates with the network, which ranks the available antennae and connects to the antenna with the strongest signal. Generally, the physically closest antennae will have the strongest signal, but signal strength can be affected by obstructions, traffic, topography, and the load on the antenna.

Trooper Tully inputted the longitude and latitudes from the phone records and used Google Maps to create a map of the cell towers. He then compared his map to Crouse's map and they were the same. The records were in Universal Time Code, so he subtracted four hours to get the local Eastern Standard Time. On July 18, 2019, Lucanalie's phone, 617-938-9553, connected to cell towers in Amherst, Worcester, Belchertown, and Brockton. Her phone connected to a cell tower in Brockton at 2:04 a.m. and was in the Brockton area through 3:24 a.m.

On cross-examination, Trooper Tully agreed that cell tower information does not reveal where the cell phone was physically located; GPS is the most accurate data to do that. He agreed that the cell tower information does not show who was using the phone at the time.

The Commonwealth rested its case, and both defendants moved for required findings of not guilty. The Court entered a required finding of not guilty on the charges of witness intimidation but denied it as to the other indictments. The defendants did not present any witnesses.

On the morning of June 2, 2023, the jury submitted two questions to the Court. Later that morning, the Court gave the jury the *Tuey-Rodriguez* charge. That afternoon, the jury found Jonathan and Lucanalie guilty of arson of a dwelling, three counts of assault with intent to murder, and malicious destruction of property. The Court (Sullivan, J.) sentenced each defendant to

eight to ten years in prison on all counts, followed by probation, and denied their motions to stay execution of the sentence.

On October 24, 2024, Jonathan and Lucnalie filed this motion for a new trial on the ground of ineffective assistance of counsel and prosecutorial misconduct. On January 2, 2025, the Appeals Court denied the defendants' motion for a stay of execution of sentence.

This Court held an evidentiary hearing on the new trial motions on June 25, June 27, July 1, July 2, and July 15, 2025. Based on the credible evidence presented and the reasonable inferences drawn therefrom, the Court makes the following findings of fact.

FINDINGS OF FACT

ADA Zane has been a prosecutor for eleven years and has tried cases in Superior Court for seven years. The Grand Jury in this case conducted a six-month investigation of the fire at 66 Sinclair Road, in two separate sittings, with the second Grand Jury held over. The matter was entitled: "Commonwealth v. 66 Sinclair Road Fire." (Exhibit 5). The Grand Jury issued subpoenas to Jonathan and Lucnalie to appear on August 16, 2019. ADA Zane recalls meeting them in the hallway in the courthouse basement and speaking to them separately. When he and Sergeant Berteletti spoke to Lucnalie, she had her head down and a hoodie over her head, and initially refused to acknowledge them. When ADA Zane stated that they were trying to figure out how the house burned down, she said that she was asleep at the time and did not know anything. She never requested to have counsel present during this interview. ADA Zane sometimes takes notes when interviewing Grand Jury witnesses, but does not believe he took notes when speaking with Lucnalie because it was not much of a conversation. ADA Zane did not call Lucnalie to testify before the Grand Jury. In response to texts by Sergeant Berteletti,

Lucnalie asked him to leave her and Jonathan alone and stated that she was not interested in meeting with police and had not had her car in months. (Exhibit 9).

Jonathan also appeared in response to a Grand Jury subpoena. Sergeant Berteletti had a phone number for the attorney who represented Jonathan in the guardianship proceedings. ADA Zane called Attorney Eric DeGoosh DiMarzio, who came to the courthouse. Jonathan stated that he was not involved in the fire and was asleep at the time. Attorney DiMarzio then stood up, stated "We're done," and told ADA Zane not to call Jonathan as a witness. ADA Zane did not seek to compel Jonathan to testify before the Grand Jury.

Jonathan and Lucnalie appeared at the courthouse in response to the subpoenas on their own volition. During the interviews at the courthouse, Jonathan and Lucnalie did not have their freedom of movement restrained in any way. In an affidavit in support of his new trial motion, Jonathan avers that he believed he was legally required to appear in response to the Grand Jury subpoena or be arrested. He would not have appeared in Brockton Superior Court and would not have spoken to investigators otherwise.

When ADA Zane sent out the Grand Jury summonses for Jonathan and Lucnalie, he had no evidence that they had committed a crime, other than Louis's and Gina's belief that they set the fire. He summonsed them because Louis had mentioned their possible involvement. At that time, ADA Zane was not aware that the fire occurred on Lovely's birthday or that it started in Jonathan's old bedroom. He cannot recall whether he knew at that time that according to Herve, Jonathan and Lucnalie had been harassing Louis. Nor can he recall whether he had viewed the surveillance video showing two individuals running from the scene. He did know that there was a video which showed a car similar to Lucnalie's car driving by the house shortly before the fire.

In ADA Zane's experience, it is not uncommon for a witness to be subpoenaed to the Grand Jury and then not called to testify.

At the time Jonathan and Lucnalie were subpoenaed, the Grand Jury had subpoenaed DCF records for Jonathan, Lucnalie, and Lovely. (Exhibit 24). The Grand Jury subpoenaed the EZ-Pass records on August 13, 2019, but those records had not yet been produced because MassDOT refused to produce them without a court order, which ADA Zane later obtained. (Exhibit 10).² In moving for the court order, ADA Zane represented that Lucnalie was believed to have been involved in the arson. (Exhibit 10). On August 13, 2019, the Grand Jury issued subpoenas for Lucnalie's summer class schedule and the home address provided to UMass (Exhibit 16). When ADA Zane summonsed the defendants, the search warrant for the CSLI data had not yet issued; Sergeant Berteletti did not apply for those warrants until September of 2019. (Exhibit 21, Exhibit 22). Louis and Gina testified before the Grand Jury on August 30, 2019. (Exhibit 23).

Although Jonathan and Lucnalie were "targets" of various records sought, ADA Zane did not consider them targets of the arson investigation when subpoenaed. The Grand Jury proceedings were titled "66 Sinclair Road," not titled with the name of any suspect. According to ADA Zane, once the EZ-Pass records were produced, Jonathan and Lucnalie became targets of the arson investigation.

On October 2, 2019, Sergeant Berteletti applied for and received a search warrant to obtain from Google the account records for all Google users within the vicinity of 66 Sinclair

²The terms and conditions of the EZ-Pass program state: "In accordance with the provisions of G.L. c. 6C, Section 13(a), MassDOT shall maintain the confidentiality of all information including, but not limited to, photographs or other recorded images . . . Such information shall not be a public record . . . and shall be used for enforcement purposes only with respect to toll collection regulations." (Exhibit 18). According to MassDOT's Privacy and Data Retention policy: "Current practice is to not disclose any data for non-tolling purposes unless subpoenaed." (Exhibit 19).

Road around the time of the fire (“the Geofence Warrant”). The affidavit in support of the Geofence Warrant incorporated by reference information from DCF records and MassDOT records. The Geofence Warrant sought to discover any device present within a small area around 66 Sinclair Road between July 18, 2019 at 12:00 a.m. through July 18, 2019 at 2:30 a.m. Eastern Standard Time. (Exhibit 1, Exhibit 13). ADA Zane was involved in selecting the longitude and latitude coordinates of the geofence, which was tight because he believed that courts were reluctant to grant broad geofence warrants. The Geofence Warrant ordered Google to produce anonymized information specifying the unique device ID of each electronic device detected, timestamps, coordinates, display radius, and data source, if available. (Exhibit 2).

Google produced its response to the Geofence Warrant in a January 17, 2020 letter on Google letterhead addressed to Sergeant Berteletti (“Google’s response”). (Exhibit 3). Google’s response stated that Google is producing “stage 1” data to enable police to eliminate devices that do not appear to be relevant to the investigation, for example, because the device was not in the relevant location for a long enough period. Google’s response noted that police could request “stage 2” information by emailing Google and listing the device IDs for which they want additional location information.

Attachment A to Google’s response contained the raw data from the Geofence Warrant. The raw data showed that on July 18, 2019, only one device was detected within the geofence. That device remained at the same longitude and latitude between 00:19:05 and 2:04:51, when the display radius of the device changed from 15 to 16 meters. The raw data identified the source of the device connection as WIFI. Google’s response went straight to Sergeant Berteletti, who forwarded it to ADA Zane.

On January 22, 2020, ADA Zane emailed Philip Mallard at the U.S. Department of Justice for assistance interpreting Google's response. (Exhibit 4). Zane questioned whether he made the geofence too small and expressed concern that the results might only be from the devices of the residents of 66 Sinclair Road. Mallard replied that the device detected could be a random wifi router, which might happen if location services on the device were turned off. In a further response, Mallard suggested that it could be a Google phone popping up on public wifi.

ADA Zane testified that he did not consider the data from the Geofence Warrant to be particularly helpful. He never requested Stage 3 data to identify the specific device captured because he did not believe there was probable cause to do so. All three residents of 66 Sinclair Road had cellphones that were not detected by the geofence. In Zane's limited experience with geofences, a device might not be captured by a geofence if it is powered off and there are many other reasons why a present device might not be captured. The one device detected showed only limited movement and ADA Zane would expect the arsonist's device to move in and then out of the geofence. Zane had the impression that the detected device might be a modem inside Louis's home.

ADA Zane produced two boxes of voluminous discovery in this case, including over one thousand pages of documents as well as video and photographs. He made copies of his entire file, placed it in boxes, and delivered the boxes to defense counsel in person. He believes he did so by the February 24, 2020 arraignment, as is his usual practice. His general discovery practice is that he has an open file policy.

ADA Zane went through his case file and typed out a draft Commonwealth's Certificate of Compliance describing each item he turned over in discovery. (Exhibit 11). That Certificate

itemized one hundred and fifty pieces of evidence. At the end of the Certificate is an explanatory paragraph which states, among other things:

The Commonwealth notes that a 4th Search Warrant was filed with Google, Inc. requesting that Google run a “geo fence parameter” on 66 Sinclair Road around the time of the alleged arson fire. Google, Inc. received the search warrant and has indicated that they will comply with the Court Order. However, Google, Inc. is still “reviewing” the requested records. The Commonwealth’s understanding is that a geo fence parameter request takes 6-8 months to complete. When/if results are provided by Google, Inc. the Commonwealth will immediately notify defense counsel.

ADA Zane believes that he never filed the Certificate of Compliance with the court because it does not include a docket number, which suggests that he prepared it pre-arraignment. Nor is there a certificate of service for this document. In 2019-2020, it was not typical for the Plymouth County District Attorney’s Office to produce certificates of compliance. Today, the office routinely files notices of discovery and certificates of compliance. ADA Zane does not recall whether he gave the Certificate of Compliance to defense counsel, although he normally would. He was surprised that neither defense counsel raised the issue of the geofence warrant at trial, as he was prepared to address it.

In the Fall of 2019, the District Court appointed Attorney Robert Christian to represent Jonathan in this case. Attorney Christian received a copy of ADA Zane’s file as discovery around the time of the arraignment. Attorney Christian reviewed all the documents provided by ADA Zane and organized them, as he did not see a notice of discovery or an index to Zane’s file. He recalls receiving electronic materials on CDs and ADA Zane’s handwritten notes, possibly for the Grand Jury presentation. If Attorney Christian received any electronic discovery by email, his practice was to save it to his computer. He placed any USB drives produced in a manila file folder inside the physical case file.

Attorney Christian does not recall ever seeing the Certificate of Compliance in this case. He testified that none of the items listed in the Certificate of Compliance seem unfamiliar to him today. ADA Zane had an open file policy and was responsive to any requests for materials. He recalls asking ADA Zane about materials from the fire investigation.

Attorney Christian had formulated a potential defense strategy of raising reasonable doubt in the Commonwealth's case, which was wholly circumstantial. At the time he took Jonathan's case, Attorney Christian had never heard of a geofence and did not know what that was. He never saw the Geofence Warrant, Google's response, or ADA Zane's email chain about the response. He would have considered the geofence evidence to be significant to Jonathan's case because the surveillance video showed two unidentifiable figures running away from the house, but the geofence captured only one device, which was not Jonathan's cellphone. If Attorney Christian had been aware of the Geofence Warrant and Google's response, he would have followed up on it because the CSLI evidence showed only the general vicinity of the cellphone, not a specific address. However, Attorney Christian acknowledges that if the captured device was a wifi router inside Louis's house, it would not necessarily be exculpatory.

Attorney Christian withdrew his representation in the Fall of 2022, when Jonathan retained private counsel, Attorney George Papachristos. At that time, Attorney Christian turned over his file, in a banker's box, to Papachristos. Attorney Christian did not keep a copy of the file.

When retained by Jonathan in November of 2022, Attorney Papachristos had been practicing for seventeen years, concentrating in criminal defense and care and protection proceedings. He had been a District Court ADA in Norfolk County and had never tried a murder

case or an arson case. However, he had been defense counsel in roughly eleven Superior Court cases.

At the time Jonathan retained him, the case was set down for trial and there was a lot of discovery. Attorney Papachristos received and reviewed the case file from Attorney Christian. He did not see a Certificate of Compliance or notices of discovery in that file. When he inquired, ADA Zane stated that everything had been turned over and he had an open file policy. However, Attorney Papachristos never went to the Plymouth County District Attorney's Office to look at Zane's file.

Attorney Papachristos felt that he needed more time to prepare for trial. He believed that the Grand Jury presentation was improper and filed a motion to dismiss, which the Court denied. He testified that he believed that there were discovery issues in this case, but he did not elaborate. Attorney Papachristos did not consider filing a motion to suppress because he did not perceive any ground on which to suppress any of the evidence, including the CSLI and EZ-Pass records. He does not remember seeing the MassDOT Customer Account Report; if he had, he would have thought that Jonathan had standing to challenge the EZ-Pass records through a motion to suppress.

The Customer Account Report produced by MassDOT in response to the grand jury subpoena lists two vehicles owned by Lucnalie, but lists both Lucnalie and Jonathan as contacts for billing purposes. (Exhibit 12, Exhibit 15). In an affidavit in support of his new trial motion, Jonathan avers that he and Lucnalie shared the EZ-Pass account and although both vehicles were registered to Lucnalie, he sometimes drove them. He expected that his toll information would be kept private and confidential.

Attorney Papachristos believes that ADA Zane's individual voir dire question about circumstantial evidence was improper. He had no strategic reason for failing to object.

There was no direct evidence that Jonathan was at the scene of the fire, so Attorney Papachristos's defense strategy was to use motions in limine to exclude circumstantial evidence on which the Commonwealth sought to rely. He unsuccessfully attempted to exclude the evidence relating to the Juvenile Court guardianship proceedings as inflammatory and having little probative value.

Attorney Papachristos did not consult with an arson expert. He read the Fire Chief's report and believed that it contained sufficient information to permit him to cross-examine the witnesses. In hindsight, Attorney Papachristos believes he should have consulted with an expert to assist him in cross-examining Sergeant Berteletti.

The parties have filed a Stipulation Regarding Testimony of John Titus, PE ("Titus"). (Exhibit 14). If called as a witness at the evidentiary hearing, Titus would have testified as follows. He is a professional fire protection engineer licensed in Massachusetts. In April of 2024, he reviewed the materials related to the investigation of the fire at 66 Sinclair Road. If he had been retained by trial counsel, he would have testified, to a reasonable degree of scientific certainty, that there is no direct evidence of incendiary fire causation and Sergeant Berteletti's investigation lacked a sound scientific basis. (Exhibit 14). Titus opines that Berteletti failed to reasonably eliminate the possibility of accidental fire causation and emphasizes that National Fire Protection Association ("NFPA") investigation standards caution against drawing conclusions in favor of an incendiary fire origin without specific supporting evidence. Titus notes that Berteletti's initial conclusion was that the cause of the fire was undetermined, but he changed his conclusion to incendiary after reviewing video footage of two figures running away

from the scene. Titus opines that the video is not proper physical evidence of fire causation and Berteletti improperly drew a conclusion of incendiary fire based on the lack of evidence of alternative causation, a process which NFPA states is unscientific and should not be used. Titus avers that Berteletti failed to eliminate a documented source of accidental fire causation, the electrical power cord and surge protector. Berteletti also failed to document whether there were other electrical conditions available as potential ignition sources and whether smoking materials might have been accidentally discarded on combustible materials. (Exhibit 14).

Attorney Papachristos did not see anything in the file he received from Attorney Christian about the Geofence Warrant. He believes that the geofence evidence is exculpatory because no device belonging to Jonathan was captured. He would have tried to use this evidence at trial, although he has not personally reviewed the geofence data.

The parties have filed a Stipulation Regarding Testimony of Ann Grant, Esq. (Exhibit 20). If called as a witness at the evidentiary hearing, Attorney Grant would have testified that she is an appellate attorney for CPCS. She reviewed Jonathan's voluminous case file that Attorney Papachristos provided to CPCS. Attorney Papachristos's file did not contain the Geofence Warrant, Google's response, or the email chain between ADA Zane and AUSA Mallard. (Exhibit 20).

In 2019, CPCS appointed Attorney Joshua Werner, who had practiced criminal defense work for forty-two years, to represent Lucnalie in Superior Court. Attorney Werner initially received several boxes of discovery from ADA Zane and thereafter, received additional discovery in small batches. In his experience, ADA Zane has an open file policy on discovery and produces everything, sometimes even his notes. Attorney Werner went through the large volume of documents produced by ADA Zane and organized them by categories of documents,

placing them into folders or binders. Any discovery he received by email, he printed and placed the paper copy in the file, while saving the email in a client folder on his computer. If he received a CD, he would have printed its contents for the file and kept the CD as a backup. Attorney Werner does not recall receiving the draft Certificate of Compliance itemizing one hundred and fifty-items produced by ADA Zane. In his experience, in 2020, it was rare to receive such a document from the Commonwealth in any case.

At the time he represented Lucnalie, Attorney Werner had heard of geofences in which police set up a perimeter and search for all devices within that perimeter at a certain point in time. He never saw the Geofence Warrant in this case or Google's response. If he had, he would have called a family member who works for Google for technical assistance in understanding Google's response. Attorney Werner declined to opine with respect to the import of the geofence evidence because he has not analyzed it. Attorney Werner's planned approach to Lucnalie's defense was to poke holes in the Commonwealth's evidence to create reasonable doubt. He had only sporadic communication with Lucnalie, so it was difficult to formulate a strategy. At one point, he moved to withdraw as counsel due to her lack of communication.

Attorney Werner represented Lucnalie until the Fall of 2022, when she hired private counsel, Attorney Bryan Owens. Attorney Werner gave Attorney Owens his original case file, which was two to three boxes of material, but did not make a log of what he turned over. He turned over everything he had except his CPCS billing records. Attorney Werner opined that if the Geofence Warrant and Google's response were not in the boxes which he delivered to Attorney Owens, it is highly unlikely that he ever possessed them.

When Lucnalie retained Attorney Owens in November of 2022, he had his office in Houston, Texas and fewer than one percent of his cases were in Massachusetts. He passed the

Texas bar in 2006 and the Massachusetts bar in 2008. Prior to this case, he had handled five to ten cases in Massachusetts.

Attorney Owens received the entire file, two boxes, from the trunk of Attorney Werner's car. The discovery materials included police reports, fire reports, and CDs. Attorney Owens cannot recall whether there was any type of index to the materials. He scanned all the paper documents and uploaded all electronic data to OneDrive in the cloud. He later provided the entire file to Lucnalie's appellate counsel through a computer link to his cloud file. Attorney Owens did not find the Certificate of Compliance in his case file. He viewed ADA Zane as very open with his case file. Attorney Owens did not believe that there were any outstanding discovery issues, and he did not ask to review ADA Zane's original file.

Attorney Owens's general practice was to review a case file to identify any suppression issues. He knew that Lucnalie had been subpoenaed to testify before the Grand Jury and had been interviewed by law enforcement when she appeared in response to the subpoena. However, he did not move to suppress Lucnalie's statements on that date because he saw no legal ground to do so. Lucnalie had simply stated that she was asleep at the time of the fire.

Attorney Owens had no prior experience dealing with EZ-Pass toll records and did not move to suppress the records of Lucnalie's car traveling east on the Mass Pike toward Brockton on the morning of the fire. His strategy was to minimize the importance of this evidence by showing that there was a more direct route of travel from Amherst to Brockton. Ideally, however, he would have wanted the toll records excluded from evidence. He might have moved to suppress the records had he been aware of the statute which limits the use of toll records to billing purposes. Attorney Owens did not have as much experience with CSLI evidence as Attorney Robert Whynott, who appeared for Jonathan. Attorney Owens did not seek suppression

of the CSLI because he believed that the search warrant for the CSLI was supported by probable cause.

Attorney Owens testified that he and Attorney Papachristos divided up cross-examination of the trial witnesses. Attorney Papachristos took the lead at trial because he had more experience practicing in Massachusetts. Attorney Papachristos was aggressive in his objections and requested frequent sidebars. Attorney Owens would have objected to evidence if he saw some basis to exclude it. However, he believed that the evidence about the Juvenile Court guardianship proceeding was relevant and admissible to show motive. Attorney Owens's trial strategy was to try to create a reasonable doubt, because there was no evidence to support any counter-narrative to the Commonwealth's theory of the arson, nor was there alibi evidence. Attorney Owens believed that Louis was a strong, credible witness and the Commonwealth's circumstantial case against Jonathan and Lucnalie was strong.

Attorney Owens agrees that the cause of the fire was an important issue because arson requires an intentional human act. Attorney Papachristos handled the fire issue, and Attorney Owens did not consider consulting a fire expert. He agrees that if there had been evidence to rebut Sergeant Berteletti's opinion with respect to the fire, the defense would have used it. He recalls discussing with Attorney Papachristos the theory that the fire was accidentally started by a power strip in the bedroom.

Attorney Owens did not have Exhibit 3, Google's response, in his trial file. If he had known that only one device was captured in the geofence and that device did not belong to either defendant, that would have been helpful to the defense. He would have used that evidence to argue that a third party was responsible for the fire. However, Attorney Owens acknowledges that evidence that the device was static for two hours suggests that it belonged to someone inside

66 Sinclair Road and not the arsonist. Therefore, the evidence was not as significant to the defense as it otherwise might have been. Exhibit 4, the email chain between ADA Zane and Mallard, was in the case file provided by Attorney Werner, but Attorney Owens does not recall seeing it. If he had, he would have followed up on it.

In September of 2024, ADA Zane allowed appellate counsel for the defendants to look through the two boxes comprising the case file, at which time they discovered the Certificate of Compliance. Appellate Attorney David Osborne asked ADA Zane to find the original of Google's response. (Exhibit 6). Zane could not locate Google's response in the box containing the file. ADA Zane notified Attorney Osborne and Attorney Patrick Levin that he could not find Google's response but recalled a single device being captured in the geofence. (Exhibit 7). Zane obtained a copy of the Geofence Warrant, Google's response, and the stage 2 data from Sergeant Berteletti and forwarded those documents to appellate counsel, which was faster than trying to search his emails, which are deleted by IT after eighteen months. In his forwarding email to appellate counsel, Zane noted that the location of the single device detected was determined through wifi networks rather than GPS or cellular signals from a mobile phone. He further noted that the stage 2 data showed that the device was largely stationary for two hours and then only moved approximately seventy feet. He opined that it was more likely that the device was a wifi router or modem rather than a mobile phone. (Exhibit 8).

Steven Verronneau ("Verronneau") is a forensic analyst with MWV Multi-Media Forensic Investigative Services, Inc. in Fall River. (Exhibit 26). He is a certified computer analyst with experience in analyzing computers, cellular devices, and video and audio. Defense counsel hired him to analyze the Geofence Warrant. According to Verronneau, a geofence is a reverse lookup search for any Google devices at a particular location, defined by longitude and

latitude, at a particular time. Google stores the location data for Google accounts, which may be accessed on android operating devices such as Samsung or Motorola and Apple phones and tablets using Google applications such as Google search and Google maps. The location information for a device can be obtained from GPS, wifi networks through crowdsourcing, Bluetooth connectivity, cellular network towers, and internal device hardware. Verronneau explained that one does not have to be actively using a device for its location data to be transmitted to Google, because background systems send and store the device's information. A device does not actually have to be connected to a known wifi source to be detected, as devices are constantly scanning the area for a wifi connection.

Verronneau analyzed the Geofence Warrant and Google's response and prepared a report. (Exhibit 27, Exhibit 28). He testified that the Geofence Warrant detected only one device and the source of the location data for that device was wifi crowdsourcing. Possible reasons why only one device was detected are that: it was in fact the only device in the area, the geofence was too small, devices present were powered off or in airplane mode, the location function on certain applications was not activated, or a device present was a burner phone. The one device detected was static for most of the two-hour period and then changed its display radius, indicating it could have moved further away from the wifi source. The display radius indicates the margin of error for the device's location and could indicate a weaker signal due to a device changing floors in the house or multiple services being used at the same time. Verronneau's impression is that the device detected by the Geofence Warrant is not directly related to a suspect in this investigation. He has no idea what type of device it was. However, he testified that a modem or wifi router cannot be a listed device in the return of geofence information.

RULINGS OF LAW

A motion for a new trial under Mass. R. Crim. P. 30(b) should be allowed only if it appears that justice may not have been done. *Commonwealth v. Duguay*, 492 Mass. 520, 531 (2023). The decision on a new trial motion lies within the sound discretion of the motion judge. *Id.*

Brady Violation

Jonathan and Lucnalie first contend that they are entitled to a new trial due to the Commonwealth's failure to disclose exculpatory information, Google's response to the Geofence Warrant. Due process and Mass. R. Crim. P. 14 obligate a prosecutor to disclose exculpatory evidence in his possession, custody, or control or in the possession, custody, or control of any person who is subject to the prosecutor's control. *Commonwealth v. Pope*, 489 Mass. 790, 797-798 (2022); *Commonwealth v. Caldwell*, 487 Mass. 370, 374 (2021).

To be exculpatory, evidence need not be absolutely destructive of the Commonwealth's case or highly demonstrative of the defendant's innocence, such as an alibi; rather, evidence is exculpatory if provides some significant aid to the defendant's case, whether it furnishes corroboration of the defendant's story, calls into question a material element of the prosecution's version of events, or challenges the credibility of a key prosecution witness. *Commonwealth v. Tavares*, 491 Mass. 362, 366 (2023); *Pope*, 489 Mass. at 800. The fact that neither Jonathan nor Lucnalie's cellphones was detected by the geofence in the direct vicinity of 66 Sinclair Road between 11:43 p.m. and 2:28 a.m. on the night of the fire was exculpatory.

The defendants have met their burden to show that the Geofence Warrant and Google's response were not produced at the time of trial. See *Pope*, 489 Mass. at 799 (burden can be met through circumstantial evidence). However, the Court does not find that ADA Zane engaged in prosecutorial misconduct by failing to produce this evidence. At most, the failure to turn over the evidence was negligent. Nonetheless, the constitutional obligation of disclosure is not measured by the moral culpability or willfulness of the prosecutor, and the overriding concern is with the justice of the conviction. *Commonwealth v. Daniels*, 445 Mass. 392, 403 n.22 (2005).

Prior to trial, Jonathan and Lucnalie filed discovery motions seeking all search warrants executed in this case and their returns and inventories. Where specifically requested evidence is not disclosed, the defendant need only demonstrate a substantial basis for claiming prejudice to obtain a new trial. *Pope*, 489 Mass. at 801; *Caldwell*, 487 Mass. at 375; *Commonwealth v. Ferreira*, 481 Mass. 641, 650 (2019). This requires a showing that the jury would have been influenced by the timely disclosure of the evidence at issue; that is, there is a "reasonable possibility that the undisclosed evidence would have made a difference." *Ferreira*, 481 Mass. at 650. See also *Pope*, 489 Mass. at 801.

Jonathan and Lucnalie contend that the geofence data would have made a difference to the jury because defense counsel could have argued that although the CSLI suggested that their phones were in the range of a cellphone tower in Brockton at the time of the fire, they were not in the immediate vicinity of 66 Sinclair Road and therefore were not the two individuals seen running from that address at the moment the house burst into flames. The Court is not persuaded that the defendants were prejudiced by the absence of this evidence. As Verroneau testified, there are numerous reasons why a geofence might not detect a cellular device, such as the geofence being too small, or that the devices present were powered off, in airplane mode, had

location functions disabled, or were burner phones. Moreover, the geofence detected only one device when two residents of the home had cellphones. Thus, given the strong circumstantial evidence implicating Jonathan and Lucnalie, there is no reasonable possibility that Google's response to the Geofence Warrant would have made a difference to the jury.

Lucnalie further argues that defense counsel could have used Google's response to suggest that the device belonged to Gina, who accidentally started the fire and then blamed the siblings to cover up her involvement. Defense counsel could have argued that Gina was awake and moving around the house for twenty-two minutes before calling 911 and used the fire extinguisher she said she saw on the floor in a futile attempt to put out the fire. Given all the evidence, including Gina's credibility when testifying and the compelling evidence of Jonathan and Lucnalie's animosity toward and harassment of Louis leading up to the fire, their presence in Brockton at 2:30 a.m. at the time of the fire, their false statements that they were at school asleep at that time, and the video, it is unlikely that the jury would have seriously considered this alternative theory of the fire. The Court perceives no reasonable possibility that the Geofence Warrant and Google's response would have made a difference to the jury. The defendants have not demonstrated that they are entitled to a new trial based on the failure to disclose exculpatory evidence.

Ineffective Assistance of Counsel

Jonathan and Lucnalie further contend that they are entitled to a new trial because they received ineffective assistance of counsel from Attorneys Papachristos and Owens. In analyzing ineffective assistance under the Sixth Amendment to the United States Constitution and art. 12 of the Massachusetts Declaration of Rights, the court's inquiry is whether there has been serious incompetency, inefficiency or inattention of counsel, conduct falling measurably below that

expected from an ordinary fallible lawyer, and whether it has likely deprived the defendant of an otherwise available, substantial ground of defense. *Tavares*, 491 Mass. at 365. Where the defendant seeks a new trial based on ineffective assistance of counsel, the defendant bears the burden of proving ineffectiveness and must show that better work by counsel would have accomplished something material for the defense. *Commonwealth v. Ng*, 489 Mass. 242, 249-250 (2022).

Failure to Suppress Evidence

Jonathan and Lucnalie contend that trial counsel was ineffective in failing to move to suppress much of the circumstantial evidence against them. Where the basis of an ineffective assistance claim is counsel's failure to pursue the suppression of evidence, the defendant must show that a motion to suppress would have been successful. *Commonwealth v. Roman*, 495 Mass. 412, 415 (2025).

EZ-Pass Records

Jonathan and Lucnalie contend that counsel should have moved to suppress the EZ-Pass toll records showing Lucnalie's car traveling east on the Mass. Pike toward Brockton before the fire. They argue that the EZ-Pass records should have been suppressed based on the statute governing MassDOT's collection of tolls, which provides, in relevant part:

The department shall maintain the confidentiality of all information including, but not limited to, photographs or other recorded images and credit and account data relative to account holders who participate in its electronic toll collection system. Such information shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or section 10 of chapter 66 and shall be used for enforcement purposes only with respect to toll collection regulations.

G.L. c. 6C, § 13(a). MassDOT's regulations for toll enforcement further provide, in relevant part:

MassDOT shall maintain the confidentiality of all information including, but not limited to, photographs or other recorded images and credit and account data relative to Account Holders who utilize its EZDrive MA toll collection system. MassDOT shall maintain procedures consistent with M.G.L. c. 66A.

700 Code Mass. Regs. § 7.05(7). Chapter 66A, entitled Fair Information Practices, provides, in relevant part:

Every holder maintaining personal data shall:—

...

(k) maintain procedures to ensure that no personal data are made available in response to a demand for data made by means of compulsory legal process, unless the data subject has been notified of such demand in reasonable time that he may seek to have the process quashed . . .

G.L. c. 66A, § 2(k). The regulations for the dissemination of personal data provide, in relevant part:

[T]he holder shall not allow any other agency or individual not employed by the holder to have access to personal data unless such access is authorized by statute or regulation which are consistent with the purposes of M.G.L. c. 66A . . . Nothing in 801 CMR 3.00 shall be construed as authorizing the holder to release information, the disclosure of which is prohibited by any statute other than M.G.L. c. 66A. Consistent with the purposes of M.G.L. c. 66A and 801 CMR 3.00, the holder may disseminate personal data to persons other than the data subject as follows: (a) The holder may disseminate personal data in response to compulsory legal process, provided that the procedures required by M.G.L. c. 66A, § 2(k) are followed. The holder need not provide the notice required under M.G.L. c. 66A, § 2(k), if a court orders otherwise upon a finding that notice to the data subject would probably so prejudice the administration of justice that good cause exists to delay or dispense with such notice.

801 Code Mass. Regs. § 3.03. The defendants argue that these statutes and regulations were violated because in obtaining a court order for the EZ-Pass records, the Commonwealth misrepresented that notice to Lucnalie of production of the records would alert her to the grand jury proceedings, which might lead her to flee, tamper with evidence, or otherwise interfere with the arson investigation. Lucnalie and Jonathan contend that this was a misrepresentation because they had been subpoenaed to appear before the Grand Jury and therefore were already aware of its investigation.

The Court is not persuaded that the Commonwealth violated the relevant statutes by representing that notice to Lucnalie of the production of EZ-Pass records might have consequences for the Grand Jury investigation. Although Jonathan and Lucnalie had been subpoenaed to testify and were therefore aware that a Grand Jury was investigating the fire at 66 Sinclair Road, there is no evidence that they were aware that they were considered suspects in the arson. Thus, there arguably was good cause to dispense with the notice requirement for the EZ-Pass records.

Further, nothing in the MassDOT statute and regulations or the Fair Information Practices Act and regulations mandates suppression as a remedy for a confidentiality violation. Rather, the remedy for an agency's violation of the Fair Information Practices Act is a private cause of action for damages, attorney's fees, and injunctive or declaratory relief. See G.L. c. 214, § 3B; *Amato v. District Atty. for the Cape and Islands District*, 80 Mass. App. Ct. 230, 236 (2011). See also *Torres v. Attorney Gen.*, 391 Mass. 1, 10 (1984) (DSS's violation of Chapter 66A by disclosing plaintiff's whereabouts on certain dates to Attorney General for use in lawsuit without showing that public interest justified invasion of privacy entitled plaintiff to nominal damages, attorney's fees, and injunction on dissemination or use of information without court order). In contrast, the Legislature has expressly provided for suppression as a remedy with respect to wiretap violations. See G.L. c. 272, § 99P (criminal defendant may move to suppress contents of intercepted communication recorded in violation of statute). Thus, a motion to suppress the EZ-Pass records on statutory grounds would not have been successful.

The defendants further contend that trial counsel should have moved to suppress the EZ-Pass records on constitutional grounds.³ A search in the constitutional sense occurs when the government intrudes on a person's reasonable expectation of privacy. *Commonwealth v. Comenzo*, 489 Mass. 155, 159 (2022). A defendant has a constitutionally protected expectation of privacy in shielding the whole of her public movements from digital surveillance. *Commonwealth v. McCarthy*, 484 Mass. 493, 502 (2020). Whether surveillance reveals the whole of a defendant's movements turns on the duration of the surveillance, and its degree of comprehensiveness. *Commonwealth v. Govan*, 496 Mass. 124, 139 (2025). See also *McCarthy*, 484 Mass. at 503 (when location data is collected for long enough period, cumulative nature of information collected implicates a privacy interest on part of person being tracked). A defendant has a reasonable expectation that the state will not electronically monitor her comings and goings in public over a sustained period time. *McCarthy*, 484 Mass. at 505. The Court examines the amount of data the government obtains, not merely the amount of data it seeks to admit into evidence. *Id.*

With respect to an automatic license plate reader (ALPR), the Supreme Judicial Court stated:

ALPRs near constitutionally sensitive locations -- the home, a place of worship, etc. -- reveal more of an individual's life and associations than does an ALPR trained on an interstate highway. A network of ALPRs that surveils every residential side street paints a much more nuanced and invasive picture of a

³To challenge a search under art. 14, a defendant must demonstrate a reasonable expectation of privacy in the place or thing searched. *Commonwealth v. DeJesus*, 489 Mass. 292, 296 (2022). The Court will assume, without deciding, that Jonathan's name on the EZ-Pass billing records and his occasional driving of the car enrolled in the EZ-Pass program gives him an expectation of privacy in the toll records at issue. Cf. *Commonwealth v. Brown*, 496 Mass. 287, 290 n.5 (2025) (defendant lacked expectation of privacy in coventurer's rental car).

driver's life and public movements than one limited to major highways that open into innumerable possible destinations.

McCarthy, 484 Mass. at 506. Here, the Commonwealth obtained eight days' worth of data from twenty-six toll locations along the Mass Pike. For the night in question, the EZ-Pass records showed the location of Lucnalie's car at several distinct points and her general route of travel along the Mass Pike but did not show where she traveled after she exited the highway. The records disclosed part of a single journey rather than a pattern of activity and did not reveal the precise contours of that journey. See *Govan*, 496 Mass. at 141. The aggregation of data points in the EZ-Pass records did not reveal a quantity or quality of information that intruded upon an objective expectation of privacy in the whole of one's physical movements. See *Commonwealth v. Henley*, 488 Mass. 95, 113-114 (2021) (location data from MBTA Charlie Card over course of two days which, along with corresponding surveillance footage, showed defendant's movement toward crime scene but did not track precise movements within subway system was not art. 14 search requiring warrant); *McCarthy*, 484 Mass. at 508-509 (data from fixed ALPR readers at the ends of Cape Cod bridges provided only limited picture of driver's movement and was not an art. 14 search because it did not allow state to monitor whole of public movements or even progress on single journey; data merely showed that defendant crossed the bridge on several dozen dates over eleven weeks). Cf. *Scholl v. Illinois State Police*, 776 F.Supp.3d 701, 720 (N.D. Ill. 2025) (data from ALPR system of five hundred cameras on highways throughout state was not Fourth Amendment search because knowing what portions of expressway someone passes tells government far less about privacies of life than data that tracks movements of cellphone owner and does not allow government to achieve near perfect surveillance). Because collection of the data from the EZ-Pass records was not a search in the constitutional sense, no warrant was required, and a motion to suppress on art. 14 grounds would not have succeeded.

Defendants' Statements

Jonathan and Lucnalie next contend that counsel was ineffective in failing to move to suppress the statements they made at the courthouse on August 18, 2019, because the prosecutor improperly subpoenaed them to obtain those statements. “A district attorney should limit use of grand jury subpoenas to situations which further the grand jury’s function.” *Commonwealth v. Cote*, 407 Mass. 827, 832 (1990). The SJC has emphatically disapproved of the practice of using a grand jury subpoena as a discovery tool to obtain an interview of a witness on a day on which the case is not before the court. *Commonwealth v. Smallwood*, 379 Mass. 878, 887 (1980). See also *Commonwealth v. Mitchell*, 444 Mass. 786, 798 n.17 (2003) (it is unethical for prosecutor to use grand jury subpoena for any purpose other than to present witness or evidence to grand jury).

The record before the Court does not demonstrate that the prosecutor acted in bad faith in issuing grand jury subpoenas to Jonathan and Lucnalie. The grand jury was in fact convened in the courthouse on August 18. Jonathan and Lucnalie were persons of interest in the investigation but were not yet targets. See *Commonwealth v. Woods*, 466 Mass. 707, 716, rev. den. 573 U.S. 937 (2014) (target is “a person as to whom the prosecutor or the grand jury has substantial evidence linking him or her to the commission of a crime and who, in the judgment of the prosecutor, is a putative defendant.”).

There is no evidence that the prosecutor never intended to call Jonathan and Lucnalie as witnesses. ADA Zane procured the attendance of Jonathan’s counsel. In counsel’s presence, Jonathan stated that he was not involved in the fire and was asleep, after which counsel terminated the interview and instructed Zane not to call Jonathan as a witness. After Lucnalie made a similarly self-serving statement, Zane decided not to call her as a grand jury witness. The Court is not persuaded that the prosecutor issued the subpoenas as an improper discovery

tool to obtain evidence for trial. See *Commonwealth v. Harris*, 2013 WL 12097105 at *2 (Mass. Super. Ct.) (Hely, J.) (it is not unlawful for DA or police to interview grand jury witness prior to his grand jury testimony where subpoena was not issued for impermissible purpose without any intention of presenting witness to grand jury). Because Jonathan and Lucnalie have not shown intentional misuse of the grand jury subpoenas, counsel would not have succeeded in trying to suppress their August 18 statements.

Lucnalie further argues that counsel should have attempted to suppress her statement as involuntary. The Commonwealth bears the burden of proving that any statement it wishes to use at trial was voluntary beyond a reasonable doubt. *Commonwealth v. Hart*, 493 Mass. 130, 135 (2023); *Commonwealth v. Tewolde*, 88 Mass. App. Ct. 423, 426 (2015). A voluntary statement is the product of a rational intellect and free will and not induced by physical or psychological coercion. *Hart*, 493 Mass. at 135-136 (court examines totality of circumstances surrounding the making of the statement).

Lucnalie argues that her statements were involuntary because she previously told Sergeant Berteletti she did not want to speak to him, she appeared at the courthouse in response to a subpoena, and she believed that she would be arrested if she did not participate in an interview. See *Tewolde*, 88 Mass. App. Ct. at 428-429 (court properly found statements to be involuntary because defendant reasonably believed he was compelled by subpoena to speak to police prior to grand jury testimony, under “unique circumstances” where five days earlier, he cut off questioning during police interview by stating he wanted lawyer and would not speak without warrant, police served him with grand jury subpoena same day, when he appeared, police interviewed him for thirty minutes prior to his grand jury testimony, he was never given target

warning although he was target of investigation, and at end of interview, when police told him he had right to counsel during grand jury testimony, he immediately requested counsel).

In response to a call from Sergeant Berteletti, Lucnalie texted him on July 18, 2019 that she wanted to be left alone and was not interested in meeting with him. She never invoked her right to counsel while dealing with police. She was summonsed to appear before the Grand Jury on August 16, 2019, at which time she was a person of interest but not yet a target of the investigation. When she appeared at the courthouse pursuant to the subpoena, she was not restrained in any way or forced to speak to ADA Zane or Berteletti. Although she appeared at the courthouse under the threat of arrest, there is no evidence that she believed that the subpoena applied to the interview. She largely refused to engage with ADA Zane and Berteletti before stating that she was asleep and did not know anything about the fire. This sequence of events did not create a reasonable belief that the grand jury subpoena applied to the pre-testimony interview and the coercion found in *Tewolde* is absent here. See *Harris*, 2013 WL 12097105 at *3 (finding statements made in courthouse interview to be voluntary even though defendant's attendance as grand jury witness was compulsory). Accordingly, under the totality of the circumstances, there was no basis for suppressing Lucnalie's statements as involuntary.

Cell Site Location Information

Lucnalie further contends that trial counsel was ineffective in failing to move to suppress the CSLI evidence placing her cellphone in Brockton at the time of the fire. She argues that Sergeant Berteletti's affidavit, which requested CSLI from her cellphone from 5:00 p.m. on July 17, 2019, to 10:00 a.m. on July 18, 2019, did not provide probable cause for a warrant. See *Commonwealth v. Hobbs*, 482 Mass. 538, 543 (2019); *Commonwealth v. Robertson*, 480 Mass. 383, 386 (2018) (tracking person's past movements through CSLI implicates reasonable

expectation of privacy under art. 14 and police request for more than six hours of CSLI requires search warrant).

To establish probable cause, the affidavit must contain a substantial basis for concluding that the CSLI sought will produce evidence of the criminal activity under investigation or will aid in the apprehension of a person who the applicant has probable cause to believe committed the crime. *Hobbs*, 482 Mass. at 544; *Commonwealth v. Estabrook*, 472 Mass. 852, 870 (2015). Where CSLI is sought, the affidavit need not show that the defendant used or possessed his cellphone during the commission of the crime. *Hobbs*, 482 Mass. at 547. “[T]he location of a suspect’s cell phone at the time of the criminal activity provides evidence directly related to his or her participation, or lack thereof, in the criminal activity, and the location of the cell phone at that time can reasonably be expected to be found in the CSLI records requested.” *Id.*

Lucnalie contends that Trooper Berteletti’s affidavit failed to establish probable cause to obtain her CSLI because it did not demonstrate that she was involved in the arson. See *Commonwealth v. Wilkerson*, 486 Mass. 159, 172 (2020) (to obtain CSLI, affidavit must show probable cause that defendant was directly involved in shooting, either as shooter or as some type of accomplice). This argument rests on the premise that the EZ-Pass records and her statements were illegally obtained and must be excised from the affidavit. See *Commonwealth v. DeJesus*, 439 Mass. 616, 625-627 (2003) (after striking references to illegally obtained evidence, court assesses whether remaining information provides probable cause for search); *Commonwealth v. White*, 374 Mass. 132, 138 (1977), *aff’d*, 439 U.S. 280 (1978) (evidence obtained in violation of art. 14 may not be considered in determining whether there was probable cause for warrant). As discussed, *supra*, neither the EZ-Pass records nor the defendants’ statements were improperly obtained. Sergeant Berteletti’s affidavit in furnished probable cause

to believe that Lucnalie was involved in the fire at 66 Sinclair Road and that the location of her cell phone at the time of the arson would provide evidence directly related to her participation. Accordingly, a motion to suppress the CSLI would not have succeeded.

The defendants also argue that counsel was ineffective in failing to object to the admission of the CSLI map created by Lieutenant Crouse, based on Lieutenant Tully's testimony that he could not testify as to Crouse's methodology to create the maps. See *Commonwealth v. McGann*, 484 Mass. 312, 316 (2020) (confrontation clause bars admission of testimonial hearsay by declarant who does not appear at trial). The critical issue with an expert is whether the defendant can cross-examine the expert in a meaningful way about his opinion. *Commonwealth v. Barry*, 481 Mass. 388, 408, cert. den., 140 S.Ct. 51 (2019). There is no confrontation violation where the testifying analyst reviewed the non-testifying analyst's work, conducted an independent evaluation of the data, and expressed his own opinion rather than merely acting as a conduit for the opinion of others. *Id.* Tully testified that he inputted the raw CSLI data, the longitudes and latitudes from Lucnalie's phone records, into Google maps to create a map of the cell towers. He then compared his map to Crouse's map and determined that they were the same. The defendants had the opportunity to cross-examine Tully about his independent analysis and opinion of what the CSLI showed. See *Commonwealth v. Chappell*, 473 Mass. 191, 200-202 (2015) (there is no confrontation violation where testifying expert independently reviewed raw data and reports produced by other analyst, made own interpretations, and ensured that there was agreement between his findings and those of other analyst). Thus, the use of Crouse's map as a sort of chalk to explain the CSLI data, which the jury had before them as exhibits, did not violate the confrontation clause. Counsel was not ineffective with respect to the CSLI evidence.

Failure to Object to Irrelevant Prejudicial Evidence

Jonathan and Lucnalie next contend that counsel was ineffective in failing to object to several pieces of irrelevant and prejudicial evidence. Jonathan argues that counsel should have objected to admission of records from WPI showing that he did not use his key card to access any university buildings on July 17 and 18, 2019. He argues that this evidence was irrelevant because he lived in an off-campus apartment and did not take classes during the summer. Evidence is relevant if it has a rational tendency to prove an issue in the case. *Commonwealth v. Booker*, 386 Mass. 466, 469 (1982); *Commonwealth v. Ali*, 43 Mass. App. Ct. 549, 563 (1997). To be admissible, evidence need not directly establish the proposition sought; it must only provide a link in the chain of proof. *Commonwealth v. Javier*, 481 Mass. 268, 280 (2019). Whether evidence is relevant and whether it is so unduly prejudicial that it should be excluded are questions addressed to the sound discretion of the trial judge. *Booker*, 386 Mass. at 469; *Commonwealth v. Diaz*, 100 Mass. App. Ct. 588, 597, rev. den., 489 Mass. 1104 (2022). Given that Jonathan was a college student in Worcester, it was relevant whether he was at school on the night of the fire. Because the evidence was relevant and not unfairly prejudicial, counsel's failure to object to its admission was not ineffective. *Ali*, 43 Mass. App. Ct. at 563.

Jonathan and Lucnalie also contend that counsel should have objected to the admission of a video showing a car consistent with Lucnalie's car at the corner of Main Street and Plain Street. They argue that the video was not properly authenticated and the car in the video had four doors, whereas Lucnalie's Honda Civic had only two doors. However, no witness testified that the car was similar to Lucnalie's car and the jury had the video as an exhibit to assess its importance to the case. Even if the video was only marginally relevant to show that the police attempted to

determine who was in the area at the time of the fire, its admission was not so prejudicial as to require a new trial.

Jonathan and Lucnalie next contend that counsel should have objected to the admission of extensive evidence about the relationship between themselves and Louis that portrayed her as a selfless, caring, and loving foster mother. They argue that this evidence had no purpose other than to evoke juror sympathy and inflame the jurors' emotions. Appeals to sympathy are improper where the victim's character and personal characteristics are not relevant to any material issue. *Commonwealth v. Santiago*, 425 Mass. 491, 495 (1997). See also *Commonwealth v. Sun*, 490 Mass. 196, 210 (2022) (court must ensure that verdict is based on evidence rather than sympathy for victim and her family). Here, the background evidence about Louis's previously loving relationship with Jonathan and Lucnalie and the shift in the family's dynamic was admissible to show the motive for the arson. The probative value of the evidence outweighed its potential to create a character contest between the Louises and the Jironvils. Because the evidence was relevant and not unfairly prejudicial, counsel's failure to object to its admission was not ineffective. *Ali*, 43 Mass. App. Ct. at 563.

Failure to Object to Improper Prosecutorial Argument

Jonathan and Lucnalie contend that counsel was ineffective in failing to object to several improprieties in the prosecutor's closing argument. A prosecutor is permitted to argue forcefully for a conviction based on the evidence and the inferences that reasonably may be drawn from that evidence. *Roman*, 495 Mass. at 422. However, the prosecutor must limit the scope of his argument to the facts in evidence and reasonable inferences and may not use closing argument to argue or suggest facts not previously introduced in evidence. *Commonwealth v. Beaudry*, 445 Mass. 577, 580 (2005). Where the defendants failed to object to the closing, the court

determines whether any error produced a substantial likelihood of a miscarriage of justice, examining the prosecutor's comments in the context of the entire statement, the judge's instructions to the jury, and the evidence introduced at trial. *Roman*, 495 Mass. at 424.

The defendants argue that the prosecutor incorrectly stated that Lucnalie's Honda Civic traveled to Brockton on the night of the fire because the portion of the MassDOT records showing that the car on the road that night was her Civic and not her Ford Fusion was not in evidence. The prosecutor also stated that the intersection of Main and Plain Streets was a few yards away from 66 Sinclair Road and that the video showed Lucnalie's car. The only evidence the jury heard about Lucnalie's car related to the Civic and the Civic's license plate was the plate associated with the EZ-Pass records introduced into evidence. The misstatement that the Main and Plain intersection was a few yards away, rather than a mile and a half, did not create a substantial likelihood of a miscarriage of justice.

Jonathan and Lucnalie further object that the prosecutor stated that the Juvenile Court records reflected that Louis gave up custody of Lovely on June 13, 2019, even though the docket was unclear as to the date. Barthelemy testified on direct that this occurred in June but testified on cross-examination that it occurred in July shortly before the fire. ADA Zane stated: "One, one of the closing arguments said it's unclear when Lovely was given up. June 13th of 2019. Again, you'll have the court docket, it's all reflected there." To the extent the prosecutor's recitation of the date was mistaken, it did not create a substantial likelihood of a miscarriage of justice because either date reflects that Louis gave up custody before the arson occurred.

The defendants also argue that the prosecutor incorrectly stated that the jury could review the surveillance video showing two people running from the scene of the fire, compare it to the defendants, and conclude that they were the Jironvils. They emphasize that the people in the

video, whose facial features are not visible, were not even identifiable by age, gender, or race. See *Commonwealth v. Davis*, 487 Mass. 448, 469 (2021) (it was improper for prosecutor to argue in opening that jury would be able to identify defendant as shooter from video taken too far away to see features of shooter's face).

ADA Zane stated: "defendant's car is traveling towards Brockton, while their phones are in Brockton, you have two people running away from a home on camera while you can see the glow growing inside the bedroom." He also stated: "Watch the video, see that a moth kicks off the security camera and you'll have access to everything else that was available on that security system and you can make your own decisions as far as what it doesn't or does show." The jury would have understood these comments as an invitation to compare the defendants' heights and general body types to the two individuals in the video and draw an inference, based on all the circumstantial evidence, that the video showed the defendants. The prosecutor did not falsely suggest that the jury could identify Jonathan and Lucnalie as the arsonists from the video alone.

Jonathan and Lucnalie next argue that the prosecutor improperly invoked the government's prestige by repeatedly equating himself with the government. A prosecutor improperly vouches for a witness when he places the prestige of his office behind the government's case by implying that the jury should credit the prosecution's evidence simply because the government can be trusted. *United States v. Perez-Ruiz*, 353 F.3d 1, 9 (1st Cir. 2003), cert. den., 541 U.S. 1005 (2004). The prosecutor should not invite the jury to rely on the prestige of the government and its agents rather than conducting its own evaluation of the evidence. *Commonwealth v. McCoy*, 59 Mass. App. Ct. 284, 295-296 n.7, rev. den., 440 Mass. 1107 (2003) (prosecutor's emotional appeal to jury about the need for crime-free streets was improper

because it implicitly called for faith and reliance on police witnesses, suggesting they could be trusted to tell the truth and defense counsel should not question their credibility).

During jury empanelment, ADA Zane made the following comments at various points, to different potential jurors: “as far as the types of evidence that -- I guess I’m the Government here, I can present – there’s direct evidence. . . .” He also stated: “So as Attorney Owens said, I’m the Government. I have the burden of proof, proving as to the jury beyond a reasonable doubt. There’s different types of evidence that I can present as the government.” To another potential juror, he stated: “I’m the government here so I have the burden and there’s different types of evidence that you can present.” In introducing himself to several potential jurors, he stated: “Good afternoon. I’m the government in this case. I have the burden of proving this case to you beyond a reasonable doubt.” These statements were not vouching for the Commonwealth’s evidence but rather, acknowledgements of the Commonwealth’s burden of proof in a criminal case.

In the opening, ADA Zane stated:

As I think I pointed out during the impanelment process, I’m the Government or the Commonwealth if you will, the A.D.A., and I’ve seen other prosecutors give opening statements and, you know, they’re very stern. Defendant, they did this. You should convict. And that’s fine, I suppose, but it doesn’t take into account the complications of life and how messy and confusing it can be to be a human being. And here, the defendants’ back stories, it’s pretty incredible, and I’m just going to tell you briefly about it, and then I’ll move on.

In the closing, ADA Zane stated:

I really hate to refer to myself as the Commonwealth, and the government. I mean, look at me. But in closing arguments, the government is trying to paint Jonathan and Lucnalie as these -- I don’t even want to say the words that were said. Listen, I told you in my opening statements and tried to be up front with you. You’re the finder of facts, you remember all the evidence and the testimony, but I would suggest to you that the majority of my questions that I had to these

witnesses including Ms. Louis, her family members, it wasn't about -- I think the word, and this is not my word, but I think this is what was said, monsters.

These comments are not vouching for the Commonwealth's witnesses but appear to be an attempt to respond to defense counsel's suggestion in closing that the Commonwealth was trying to paint a picture of the Jironvils as bad people.

Finally, Jonathan and Lucnalie argue that the prosecutor improperly vouched for Sergeant Berteletti's credibility by stating: "As far as trusting somebody in a moment, you know, he's a trooper, he's a sergeant, he's a big guy, but he's in front of the court here, he's in front of y'all strangers." The transcript reveals that ADA Zane made this statement in the context of addressing defense counsel's argument that Berteletti's opinion should not be trusted because he identified the photograph of the wrong bedroom as showing the origin of the fire. ADA Zane stated:

But yes, he misidentified some of them. But the reason that you know that is because Trooper Berteletti pointed out that he misidentified something. For ID he raised it when it was handed to him. So as far as trusting somebody in a moment, you know, he's a trooper, he's a sergeant, he's a big guy, but he's in front of the court here, he's in front of y'all, strangers, you're listening to him. In that moment he admitted that he made a mistake and that he identified the wrong bed. And he owned it. So as far as credibility, how you should do that, whether that means you should trust anything else he says, take that moment of ownership and I'd say use that to consider his credibility and what kind of investigator the trooper is. He pointed out his mistake and he took responsibility for it . . .

The prosecutor may not express a personal belief in the credibility of a witness's testimony.

Commonwealth v. Kapaia, 490 Mass. 787, 802 (2022). However, ADA Zane's comments about Sergeant Berteletti did not urge the jury to believe him simply because he was a police officer or suggest a personal belief in his credibility. See *Commonwealth v. Burts*, 68 Mass. App. Ct. 684, 688 (2007). Rather, the comments were part of an argument that Berteletti was a good investigator and credible witness because he admitted his mistake. See *Kapaia*, 490 Mass. at 802-803 (prosecutor may argue why witness should be believed and respond to specific attack on

witness's credibility). The defendants have not demonstrated error in the prosecutor's closing argument warranting a new trial.

Failure to Consult with Fire Expert

Jonathan and Lucnalie contend that counsel was ineffective in failing to investigate Sergeant Berteletti's opinion that the cause of the fire was incendiary and failing to consult a fire expert to challenge that opinion. The State and Federal constitutions require defense counsel to conduct an independent investigation of the facts. *Commonwealth v. Shepherd*, 493 Mass. 512, 537 (2024); *Commonwealth v. Diaz Perez*, 484 Mass. 69, 74 (2020). Any decision not to investigate or to limit an investigation must be supported by reasonable professional judgment. *Tavares*, 491 Mass. at 366; *Diaz Perez*, 484 Mass. at 74. See also *Commonwealth v. Epps*, 474 Mass. 743, 758 (2016) (extent of necessary investigation depends on strength of potential defense relative to availability and strength of other potential defenses). "Absent a reasonable investigation, defense counsel lacks sufficient information to evaluate his or her strategic options and to make decisions in the best interests of the client." *Diaz-Perez*, 484 Mass. at 74. The duty to investigate may require drawing on experts for assistance. *Id.* at 74-75. The absence of expert testimony constitutes ineffective assistance where such testimony could provide a substantial ground of defense or is necessary to rebut critical expert testimony relied upon by the Commonwealth. *Commonwealth v. Rios*, 496 Mass. 11, 24-25 (2025); *Commonwealth v. Jacobs*, 488 Mass. 597, 606 (2021).

As Attorney Owens candidly testified, there was no alibi evidence or third-party culprit evidence in this case. Attacking Sergeant Berteletti's opinion that the fire was intentionally set was the strongest defense available to the arson charge. Prior to trial, Attorney Papachristos requested and received funds to hire a fire expert, although he never did so. In addition, prior to

trial, both Attorney Papachristos and Attorney Owens filed motions for a continuance on the ground that there were issues requiring the use of experts with respect to the cause or inception of the fire. At the evidentiary hearing, Attorney Papachristos testified that he believed that Sergeant Berteletti's report about the fire contained sufficient information to permit him to cross-examine Berteletti about the cause of the fire. Whether to call or not call an expert is a strategic or tactical decision. *Rios*, 496 Mass. at 25. Accordingly, the critical question is whether the decision not to consult with or call a fire expert was manifestly unreasonable. *Id.*

Jonathan and Lucnalie argue that consultation with a fire expert such as Titus would have enabled counsel to exclude Sergeant Berteletti's opinion from evidence as scientifically unreliable.⁴ Expert testimony is admissible in a criminal case if the testimony will assist the factfinder, the witness is an expert in the relevant area of inquiry, the expert's opinion is based on facts or data reasonably relied on by experts in the relevant field, the expert's methodology is reliable, and that methodology is applied to the facts of the case in a reliable manner. *Commonwealth v. Hinds*, 487 Mass. 212, 220 (2021); *Commonwealth v. Barbosa*, 457 Mass. 773, 783 (2010), cert. den., 563 U.S. 990 (2011). Where a party challenges the reliability of an expert's opinion, the court must act as a gatekeeper to ensure that the expert testimony meets a minimum standard of reliability. *Hinds*, 487 Mass. at 218; *Barbosa*, 457 Mass. at 783. The judge has broad discretion in assessing the reliability of the proffered testimony depending on the circumstances of the case. *Commonwealth v. Rintala*, 488 Mass. 421, 438 (2021). However, relevant factors include whether the scientific process employed is generally accepted, whether it has been or can be subjected to testing, whether it has been subjected to peer review, whether it

⁴Although counsel did not move for a *Lanigan* hearing prior to trial, Attorney Papachristos did request and receive a voir dire of Sergeant Berteletti's proposed testimony before he testified in front of the jury.

has an unacceptably high known or potential error rate, and whether it is governed by recognized standards. *Id.* at 437-438 n. 30.

The Court would not have excluded Sergeant Berteletti's testimony based on Titus's report. The Court disagrees with the argument that Berteletti's testimony did not assist the jury because it was based solely on the surveillance video, which the jury could evaluate themselves. Further, Berteletti's failure to follow NFPA 921 in all respects does not render his opinion unreliable. Berteletti testified as to his methods in examining the exterior of the building looking for fire patterns and the damage sustained to determine the point of origin. He also testified as to the steps he took to rule out accidental causes of the fire. In the Court's view, Titus's criticism of Berteletti's methodology goes to the weight not the admissibility of Berteletti's opinion that the fire was incendiary. Cf. *Rintala*, 488 Mass. at 441-442 (expert testimony on how long it took paint to dry should have been excluded as unreliable where it was based on subjective observations of paint drying experiments that did not replicate reality of crime scene, rather than evaluative criteria suggesting reliable methodology).

Jonathan and Lucnalie further argue that consultation with a fire expert such as Titus would have enabled counsel to challenge Berteletti's opinion that the fire was incendiary. Defense counsel's cross-examination of Berteletti focused largely on the point of origin of the fire and Berteletti's error with respect to the bedroom photographs. However, there did not appear to be any dispute that the fire started in Jonathan's old bedroom. Although defense counsel argued in closing that Berteletti did not conduct a good investigation, his cross-examination did little to undermine Berteletti's opinion that the fire was intentionally set, other than emphasizing that no accelerant was found.

Consultation with Titus would have permitted counsel to argue to the jury that Berteletti's conclusion was unreliable because his opinion was based on the unscientific negative corpus method prohibited by NFPA 921 and because he changed his opinion from undetermined to incendiary based on the video, which is not physical evidence of fire causation that can be determinative. In addition, consultation with Titus would have assisted defense counsel in arguing that Berteletti failed to follow NFPA 921 procedures to adequately eliminate accidental sources of ignition such as the power strip. Berteletti's opinion that the fire was intentionally set was important evidence with respect to the arson charge, and consultation with an expert would have enabled defense counsel to conduct a more pointed and effective cross-examination. The Court concludes that defense counsel's failure to at least consult with a fire expert was manifestly unreasonable. See *Dugas v. Coplan*, 428 F.3d 317, 329-331 (1st Cir. 2005) (failure to consult with fire expert was ineffective where creating reasonable doubt as to whether fire was arson was critical to defense, counsel lacked knowledge or experience in arson investigation and arson cases, and counsel attempted to raise on cross-examination possibility that fire started accidentally but did not ask types of questions that trained fire investigator or forensic scientist would have). See also *Commonwealth v. Millien*, 474 Mass. 417, 434-436 (2016) (counsel was ineffective in failing to consult with medical expert to rebut Commonwealth's expert opinion that child's head injuries were caused by shaking or blunt force trauma and to support defendant's claim that child accidentally fell from couch and struck head on floor). Cf. *Rios*, 496 Mass. at 25 (decision not to call expert on ShotSpotter evidence was not manifestly unreasonable where counsel vigorously and effectively challenged the accuracy and reliability of the evidence through cross-examination and calling defense expert would have added little); *Commonwealth v. McQuade*, 46 Mass. App. Ct. 827, 836, rev. den., 430 Mass. 1104 (1999) (counsel's failure to

introduce gas chromatograms of fire scene samples did not require new trial where counsel educated himself about scientific testing at issue and effectively cross-examined Commonwealth's witness, and defense rested primarily on alibi and mistaken identity, not that fire was accidental rather than arson).

Nonetheless, the defendants have not demonstrated that consultation with Titus would have provided them with a substantial ground of defense. The assistance of a fire expert might have undermined the credibility of Berteletti's opinion that the cause of the fire was incendiary. However, this is not a case where a defense expert would have testified that the fire was in fact accidental in nature. Evidence that the cause of the fire could not reliably be determined would not have accomplished something material for the defense given the strength of the remaining evidence of arson. That evidence included the guardianship dispute, Jonathan and Lucnalie's increased hostility toward and harassment of Louis leading up to the fire, the EZ-Pass records showing Lucnalie's car traveling in the direction of Brockton on the night of the fire, the CSLI showing that her phone was in proximity to 66 Sinclair Road at the time of the fire, the consciousness of guilt evidence that Jonathan and Lucnalie lied by stating that they were home asleep at the time of the fire, and the video of two people running away from the house as it burst into flames. In the face of this compelling circumstantial evidence that the fire was intentionally set, Titus's opinion that Berteletti's investigation was deficient and that the cause of the fire could not be determined would not have materially impacted the jury's decision-making.

Thus, Jonathan and Lucnalie have not demonstrated that counsel's failure to consult with a fire expert deprived them of a substantial ground of defense so as to require a new trial. See *Dugas v. Coplan*, 506 F.3d 1, 11-13 (1st Cir. 2007) (counsel's failure to consult with fire expert in arson case did not deprive defendant of substantial defense where expert's criticisms of state

chemist's analysis of fire debris did not meaningfully undermine evidence that fire was intentionally set). Cf. *Commonwealth v. Rosario*, 477 Mass. 69, 80-81 (2017) (where there was evidence that defendant's admission to throwing Molotov cocktail was involuntary and unreliable, new fire science warranted new trial where although it did not prove that fire was accidental, it allowed defendant to challenge opinion of Commonwealth's arson expert that fire was incendiary and involved flammable liquids).

Deprivation of Impartial Jury

Finally, Jonathan and Lucnalie contend that they are entitled to a new trial because the prosecutor's improper voir dire question deprived them of their right to be tried by an impartial jury. See *Commonwealth v. Montgomery*, 495 Mass. 238, 244 (2025) (art. 12 guarantees the right to trial by impartial jury); *Commonwealth v. Williams*, 481 Mass. 443, 447, 453 (2019) (voir dire ensures that each juror is unprejudiced and uncommitted as to defendant's guilt and will fairly evaluate the evidence and apply judge's instructions on law). The Superior Court Rule relating to attorney-conducted voir dire provides that attorneys may not ask questions that "seek to commit juror(s) to a result, including, without limitation, questions about what evidence would cause the juror(s) to find for the attorney's client or the party." Mass. Super. Ct. R. 6(3)(e). Voir dire questions must not commit the jury to a verdict in advance or have the effect of identifying and selecting jurors who are predisposed to convicting the defendant based on evidence the Commonwealth would present. *Montgomery*, 495 Mass. at 245; *Commonwealth v. Perez*, 460 Mass. 683, 691 (2011).

It is proper to ask questions intended to assess whether any potential jurors harbor biases that could cause them to reject a case based largely on circumstantial and witness evidence, regardless of the strength of that evidence. *Commonwealth v. Brown*, 490 Mass. 171, 191 (2022). However, it is improper to ask the jury whether they could “convict” a defendant based on hypothetical circumstances related to the case. *Commonwealth v. Brown*, 496 Mass. 287, 294 (2025) (improper to ask if juror would be able to convict with no evidence of motive); *Montgomery*, 495 Mass. at 239 (improper to ask if juror would be able to convict without forensic evidence and only eyewitness testimony). Such a question, although hypothetical, inherently seeks to commit prospective jurors in advance to convicting the defendant despite the absence of forensic evidence. *Brown*, 496 Mass. at 297; *Montgomery*, 495 Mass. at 246. Here, ADA Zane asked several potential jurors whether they would “have any issues convicting somebody on circumstantial evidence” or “be able to convict somebody on circumstantial evidence alone.” This type of voir dire question is improper.

Where the defendants did not preserve the issue at trial, the court considers whether the error created a substantial risk of a miscarriage of justice. *Brown*, 496 Mass. at 295; *Montgomery*, 495 Mass. at 243. The same standard applies to a claim that counsel was ineffective in failing to object to the improper voir dire question. *Montgomery*, 495 Mass. at 243. This requires the court to assess whether there is serious doubt whether the result of the trial might have been different had the error not been made. *Brown*, 496 Mass. at 297; *Montgomery*, 495 Mass. at 247. The court considers the case as a whole, including the strength of the Commonwealth’s case, the nature of the error, and the significance of the error in the context of the trial. *Brown*, 496 Mass. at 297; *Montgomery*, 495 Mass. at 248.

Jonathan and Lucnalie contend that a new trial is required because the improper question, coupled with ADA Zane's exercise of peremptory challenges to jurors who seemed hesitant to rely on circumstantial evidence alone,⁵ skewed the jury in favor of the prosecution and primed the seated jurors to accept the prosecutor's evidence. The Court is not persuaded, given the context of the empanelment and the trial as a whole. See *Montgomery*, 495 Mass. at 250. After the prosecutor asked several jurors the improper question, the Court suggested that he not ask about "convicting" and the prosecutor added to the question: "Would you need somebody to testify that they saw a crime committed, or would you be able to look at all the evidence as a whole [or at the big picture]?" This rephrasing of the question focused on the juror's willingness to fairly evaluate the evidence presented and properly apply the law, although it still contained the improper reference to conviction. See *id.* at 246. Further, although the Commonwealth's case consisted of entirely circumstantial evidence, it was relatively strong. The jurors were instructed regarding the Commonwealth's burden of proof and evaluating direct versus circumstantial evidence, and it is presumed that the jury followed those instructions. See *Brown*, 496 Mass. at 298; *Montgomery*, 495 Mass. at 250. In the Court's view, the seated jurors were fair and impartial, not predisposed to convict the defendants. Accordingly, the improper question did not create a substantial likelihood of a miscarriage of justice.

Jonathan and Lucnalie have failed to demonstrate that justice was not done in this case.⁶

⁵As noted, *supra*, Attorney Papachristos exercised a peremptory challenge to Juror Number 1, who stated she would not have any issue convicting on circumstantial evidence alone.

⁶This is so even under a confluence of factors analysis. See *Commonwealth v. Brescia*, 471 Mass. 381, 391 (2015) (where specific standards such as ineffective assistance of counsel and newly discovered evidence do not require reversal of conviction, judge faced with extraordinary fact pattern that frustrates even meticulous efforts to do justice may nonetheless order new trial based on confluence of factors).

ORDER

For the foregoing reasons, it is hereby **ORDERED** that Defendants' Motions For New Trial be **DENIED**.



William F. Sullivan
Justice of the Superior Court

DATED: August ~~18~~ 2025