COMMONWEALTH OF MASSACHUSETTS
Supreme Judicial Court

DAR-_____
No. 2022-P-0285

COMMONWEALTH OF MASSACHUSETTS, Appellee

v.

LINDSAY HALLINAN, Appellant

Application for Direct Appellate Review

REQUEST FOR DIRECT APPELLATE REVIEW

Pursuant to Mass. R. App. P. Rule 11, Lindsay Hallinan applies for leave to obtain direct appellate review.

STATEMENT OF PRIOR PROCEEDINGS

On November 22, 2013, Ms. Hallinan admitted to sufficient facts in the Salem District Court on a single count of Operating a Motor Vehicle While Under the Influence of Liquor, 2nd Offense. Add. 196. The district court continued her case without a finding for two years, with conditions, fines, fees, and a statutory license suspension. Add. 196; 199.

On June 14, 2021, Ms. Hallinan filed a motion to withdraw her admission to sufficient facts premised on misconduct relating to the Office of Alcohol Testing's (OAT) failure to maintain breath test devices according to minimum scientific standards and systematic suppression of exculpatory evidence uncovered during consolidated litigation in Commonwealth v. Ananias, et. al., 1248CR1075. Add. 201.

On August 17, 2021, Judge Robert Brennan, the First Justice of the Salem District Court, and the judge whom this Court specially assigned to the Ananias breath test litigation, Add. 281; 290, conducted a hearing on Ms. Hallinan's motion. Add. 241. On October 4, 2021 Judge Brennan denied Ms. Hallinan's motion. Add. 183. On November 3, 2021 Ms. Hallinan timely filed her Notice of Appeal. Add. 280.

STATEMENT OF FACTS RELEVANT TO APPEAL

A. Commonwealth v. Ananias & Others: The Consolidated Draeger Alcotest 9510 Breath Test Litigation

Following this Court's decision in Commonwealth v. Camblin, 471 Mass. 639, 647-648 (2015) the Chief Justices of the District and Boston Municipal Courts

issued orders of special assignment consolidating cases in which defendants challenged the scientific reliability of Draeger Alcotest 9510 machines, which machines OAT first deployed in June, 2011. Add. 196.

On June 13, 2016, the Chief Justice of the Trial Court assigned Judge Robert Brennan to conduct a consolidated Daubert-Lanigan hearing, the outcome of which would apply to all OUI defendants prosecuted with a Draeger 9510 breath test result. Add. 199.

i. Daubert-Lanigan Hearing Revealed OAT's Failure to Calibrate Draeger Alcotest 9510 Breath Test Machines in Accordance with Scientific Standards

After a two-week Daubert-Lanigan hearing where the defense and prosecution presented expert witnesses from around the world, Judge Brennan issued a decision on February 16, 2017 (Ananias I) that made OAT's scientific failings publicly known for the first time. Add. 323. Judge Brennan found that since the deployment of the Draeger 9510s in June of 2011, OAT represented that it had calibrated the machines in accordance with basic scientific standards, when in fact OAT had failed to utilize written protocols standardizing that process. Add. 322-325. Consequently, Judge Brennan found that because OAT did

not employ a "scientifically sound methodology," "any Alcotest 9510 BAC [] result from a device calibrated and last certified by OAT between June 201[1][1] and September 14, 2014 presumptively is excluded from use by the Commonwealth in any criminal prosecution." Add. 325.

ii. **OAT's Intentional Withholding of Exculpatory Evidence**

During the travel of the Ananias litigation, Judge Brennan Ordered OAT to produce records. In response, OAT submitted 1,976 worksheets, which it represented to be "all of the materials that the Court ordered produced." Add. 33. Of those 1,976 worksheets, only 11 evidenced a failed calibration. Add. 33.

Doubting those results, the Ananias defendants uncovered 432 worksheets which OAT concealed from the Court, each of which represented a failed annual calibration beyond the 11 which OAT disclosed. Add. 33.

The Ananias defendants filed a motion for

[1] Judge Brennan issued a "[c]orrection as to the factual findings of the Memorandum of Decision ... specifically correcting the date of deployment of the Alcotest 9510 breathalyzer to MA law enforcement agencies beginning June 2011 (and NOT June, 2012)." (emphasis in original). Add. 338.

sanctions on August 19, 2017. Add. 30. The motion led the Executive Office of Public Safety and Security (EOPSS) to launch an investigation, which found:

> serious errors of judgment in its responses to court-ordered discovery, errors which were enabled by a longstanding and insular institutional culture that was reflexively guarded, which frequently failed to seek out or take advantage of available legal resources, and which was inattentive to the legal obligations borne by those whose work facilitates criminal prosecutions.

Add. 58.

The EOPSS investigation further revealed that since at least the deployment of the Draeger 9510 in June of 2011, OAT withheld exculpatory evidence and disobeyed court orders pertaining to discovery and, most importantly, that it had, during that time period, misrepresented its testing process as scientific. Add. 58; 84-90. It found OAT had no "written policies regarding discovery," resulting in a discovery process that "was haphazard at best, and [] frequently failed to produce responsive documents that were in OAT's possession." Add. 67; 78. It further found that OAT "has often been reluctant to volunteer more information than its personnel viewed as strictly necessary ... declined to produce additional

documents, even to prosecutors, in the absence of a court order," Add. 66, leaving "prosecutors in the position of unwittingly representing ... that the Commonwealth had complied with its discovery obligations, when in fact it had not." Add. 58.

Separately, in response to the motion for sanctions, the Commonwealth identified "over 50,000 documents [that] OAT intentionally withheld," "including exculpatory information on thousands of cases, involving both consolidated and non-consolidated defendants..." Add. 186. Neither EOPSS, OAT, nor the Commonwealth could identify all the failed calibration records for the affected machines, as a small number remain "misplaced." Add. 33.

While the motion for sanctions was pending, the parties drafted the Parties' Joint Stipulation of Facts and Recommended Resolution to the Defendants' Motion for Sanctions (Joint Agreement). The Joint Agreement contained stipulated facts as well as agreements for sanctions. Add. 48. Every District Attorney in the Commonwealth signed the agreement, Add. 54, and the Court adopted it as an Order on

November 5, 2018. Add. 32. The Joint Agreement acknowledged that OAT "intentionally withheld ... exculpatory materials." Add. 49. It also adopted EOPSS' findings. Add. 50.

Judge Brennan then Ordered an expansion of the exclusion period, observing that "[t]he Commonwealth conceded in [the Joint Agreement] ... that OAT's behavior was of a nature and breadth sufficiently serious that [broader] exclusion ... was an appropriate remedy." Add. 190.

"The Commonwealth agree[d] not to seek to establish the reliability of OAT's calibration and certification ... in this enlarged period" and the Court ordered the presumptively excluded results categorically excluded. Add. 52. Finally, the parties agreed, and Judge Brennan ordered the Commonwealth to provide written notice to affected defendants. The Commonwealth agreed to shoulder the cost of notification. Add. 53.

Ultimately, Judge Brennan excluded Draeger 9510 results from June, 2011 until the Commonwealth demonstrated "that OAT has filed an application for accreditation with ANAB that is demonstrably

substantially likely to succeed." Add. 45. The Court also Ordered that OAT overhaul its discovery practices and do so publicly. Add. 45.

On July 29, 2019, Judge Brennan found that as of April 18, 2019, the Commonwealth was in compliance with all aspects of its Order. Add. 348.

B. **Commonwealth v. Lindsay Hallinan: Motion to Withdraw Admission to Sufficient Facts**

On October 5, 2013, Ms. Hallinan was stopped at a Massachusetts State Police sobriety checkpoint. Add. 349. "[A]s with many cases involving roadblock Operating Under the Influence of Liquor arrests, the breathalyzer was the most inculpatory piece of evidence used against [Ms. Hallinan]." Add. 193. "The proof of her impairment otherwise was based upon a fairly brief interaction with troopers and her admission to three drinks." Add. 193. The breath test device in her case was last certified on May 2, 2013. Add. 353.

On November 22, 2013, on counsel's advice that it would not be reasonable to take this case to trial given the breath test result of 0.23, Ms. Hallinan tendered a plea. Add. 356. The "breathalyzer result was part of the factual basis for the plea." Add. 192.

Ms. Hallinan's breath test fell into the class of presumptively excluded results established in Ananias I based on the reliability of that test, and the class of breath test results excluded as a result of OAT's withholding of exculpatory evidence in Ananias II. The Commonwealth notified Ms. Hallinan pursuant to the Joint Agreement. Add. 358. Ms. Hallinan retained her original counsel to prosecute a motion for new trial.

STATEMENT OF ISSUES WITH RESPECT TO WHICH MS. HALLINAN SEEKS DIRECT APPELLATE REVIEW

The latest of the Massachusetts lab scandals, this case arises from the Office of Alcohol Testing's (OAT) intentional concealment of evidence that its breath testing methodology failed to meet minimal scientific standards for a period of around eight years, affecting approximately 27,000 individuals. Add. 187. The motion judge found that "there is a logical connection between the drug lab and breathalyzer cases: they are similar in scope, they involve evidence collected and analyzed by arms of the Massachusetts State Police Crime Laboratory, they directly impact the integrity of the process, and they involve a 'lapse of systemic magnitude in the criminal justice system[.]'" Add. 189 (citations omitted).

Nevertheless, the district court denied Ms. Hallinan's motion for a new trial because "it is not within the authority of [the district court] to create a conclusive presumption of egregious misconduct[.]"[2] Add. 190. The first question presented, then, is **(I)** whether OAT engaged in egregious misconduct and the second is **(II)** if so, whether a conclusive presumption of egregious misconduct is warranted.

The third question **(III)** presented is one left open in Commonwealth v. Scott, 467 Mass. 336, 361 (2014): whether a "guilty plea [or admission] constitutes a waiver of the right to seek a new trial on the grounds of either newly discovered evidence or prosecutorial nondisclosure."

After OAT's misconduct was revealed, the Commonwealth agreed that breath test results spanning several years would be excluded and the Commonwealth would pay to notify affected individuals. The

---

[2] The Court otherwise found that Ms. Hallinan met the second prong of the Scott-Ferrara analysis - that is - she "establishe[d] a reasonable probability that she would not have tendered her admission to sufficient facts if she had known that the breathalyzer results would be excluded," Add. 193-194, given her "strong argument that she would not have tendered her admission to sufficient facts if she had known the breathalyzer results would be excluded." Add. 194.

Commonwealth also agreed that judicial estoppel prevented any position to the contrary. However, in responding to Ms. Hallinan's motion, the Commonwealth argued that Ms. Hallinan was disentitled to relief for reasons including that she failed to establish that misconduct specifically affected her case and that her plea waived her claims of prosecutorial non-disclosure and newly discovered evidence. The fourth question, then, is **(IV)** whether the Commonwealth's position is precluded by judicial estoppel.

The final question is **(V)** whether a defendant who successfully vacates their plea as a result of OAT's misconduct may be exposed to a more serious charge than that for which they were initially convicted, and if convicted again, receive harsher punishment or be denied credit for punishment already exacted.

Ms. Hallinan properly raised and preserved before the District Court all questions except question **(V)**.

BRIEF STATEMENT OF ARGUMENT

I. OAT'S DELIBERATE WITHHOLDING OF EXCULPATORY EVIDENCE AFFECTING THE ADMISSIBILITY OF BREATH TESTS CONSTITUTES "EGREGIOUSLY IMPERMISSIBLE" CONDUCT WHICH ANTEDATED MS. HALLINAN'S PLEA

A plea may be vacated if "egregious" government misconduct "implicat[ing] due process" antedates it.

Scott, 467 Mass. at 347. The misconduct must have had a material influence on the decision to plead. Id. Because misconduct "by the government" includes state crime laboratories, "[OAT] is an agent of the prosecution team[.]" Id. at 349, Add. 189.

OAT's misconduct was "egregious": its failures as a calibration lab and intentional withholding of exculpatory evidence concerns the breath test result - the crown jewel of any OUI prosecution. "The conclusion that OAT's behavior was egregiously impermissible is inescapable." Add. 189. The Commonwealth's entering into the Joint Agreement "can only be construed as a concession that the government's conduct for the duration of the period was 'egregiously impermissible.'" Add. 190. OAT's misconduct persisted in the Ananias litigation: it "blatantly disregard[ed]" court orders and distorted evidence by culling out almost every exculpatory document, elevating this case to a level of wrongdoing eclipsing that of the individual bad actors at the heart of the Dookhan and Farak scandals. OAT's conduct "cast[s yet another] shadow over the entire criminal justice system." Scott, 467 Mass. at 352.

Judge Brennan's finding "[n]o doubt" that those who tendered pleas before OAT's malfeasance came to light "were victimized by OAT's conduct" shows a nexus between the government misconduct and her case. Add. 191. The global remedy applied to all cases, which the Commonwealth conceded was necessary, establishes the nexus between the misconduct and those cases.

Beyond that nexus, by virtue of OAT's concealment of its own wrongdoing, the specific harm in any given case "belies reconstruction." OAT's misconduct was unknowable because, by certifying to the Court that it had "calibrated" each device, OAT represented that it did so reliably. OAT reinforced that false veneer by concealing evidence revealing that the machines had, in fact, failed calibration in a great many cases.

This case parallels the nexus problem in Scott. There, defendants could not show a nexus between their case and Ms. Dookhan's misconduct because she could not reliably identify affected cases. Here, defendants cannot show a nexus because OAT concealed its misconduct over an expanse of years. Here as in Scott, despite the difficulty reconstructing the government's malfeasance, it is "reasonably certain

... that [OAT's] misconduct touched a great many cases." Scott, 467 Mass. at 352.

The only available evidence connecting any given case to misconduct is maintained and generated by OAT - the very agency whose default response was to conceal its own wrongdoing - up to and including its choice to hide documents from the court charged with scrutinizing its own misconduct. As a result, where the only way to connect misconduct to a given case was Ms. Dookhan's signature as analyst on the lab report, the only trustworthy basis to assess whether OAT's misconduct touched a given case is by seeing if the applicable certification falls within the exclusion period.

The systemic nature of OAT's deceptive practices thwarts other means of reconstruction. There is no one bad actor - the misconduct resulted from a lab wide culture. Due to its "unwritten policies," OAT chose to produce discovery obfuscating its unscientific methodology and to conceal that which exposed it. Thus, the full impact of OAT's "longstanding insular institutional" practices and "intentional" misconduct will never be known. Add. 58;

101. Given the magnitude of OAT's deception, it is "most appropriate that the benefit of [this Court's] remedy inure to defendants." Scott, 467 Mass. at 352.

II. OAT'S MISCONDUCT CREATES A LAPSE OF SYSTEMIC MAGNITUDE WHICH CAN ONLY BE REMEDIED BY A CONCLUSIVE PRESUMPTION OF EGREGIOUS MISCONDUCT

A sui generis evidentiary rule granting a conclusive presumption of egregious misconduct on a showing that an individual submitted to a breath test during the exclusion period is necessary. It is unreasonable to deny relief to those unable to point to OAT's specific misconduct in their own case, as it is OAT's own behavior that prevents them from doing so. "[W]e cannot expect defendants to bear the burden of a systemic lapse." Bridgeman v. Dist. Attorney for the Suffolk Dist., 471 Mass. 465, 487 (2015). This Court should "fashion a workable approach to motions to withdraw a guilty plea brought by defendants affected by this misconduct[.]" Scott, 467 Mass. at 352.

III. OAT'S UNSCIENTIFIC PRACTICE AND CONCEALMENT OF THE SAME SHOULD PERMIT AN IMPACTED DEFENDANT TO VACATE THEIR PLEA BASED ON A COMMON LAW CLAIM OF NEWLY DISCOVERED EVIDENCE OR CONSTITUTIONAL CLAIM OF PROSECUTORIAL NON-DISCLOSURE

Newly discovered evidence provides a common-law basis to vacate Ms. Hallinan's plea, Commonwealth v.

Grace, 397 Mass. 303, 305 (1986); as does the constitutional theory of prosecutorial non-disclosure. Commonwealth v. Tucceri, 412 Mass. 401, 412 (1992). In the context of a plea, the relevant inquiry is whether "there is a reasonable probability that, but for [the newly discovered or suppressed evidence], [the defendant] would not have pleaded guilty[.]" Scott, 467 Mass. at 361 (citations omitted).

The newly discovered / suppressed evidence satisfies the "reasonable probability" standard because it undermined the breath test which was the centerpiece of the case against Ms. Hallinan; the remaining evidence against her was subjective and weak. Id. at 305. OAT's failure to meet minimum scientific standards was unknowable prior to Ms. Hallinan's admission; the evidence is thus "newly discovered." Grace, 397 Mass. at 306. Suppression of this evidence violated due process. Commonwealth v. Martin, 427 Mass. 816, 823 (1998).

The Commonwealth was obliged to furnish evidence of OAT's malfeasance even in cases resolved with a plea. While the Supreme Court in U.S. v. Ruiz, 536 U.S. 622 (2002) held that prosecutors need not

disclose impeachment evidence prior to a plea, its holding did not extend to exculpatory evidence. Id. at 625, 629.[3] The Commonwealth was obliged to disclose OAT's incompetent procedures. Compare Mass. R. Crim. P. 14(a)(1)(a)(iii) (mandating "automatic discovery" of exculpatory evidence) with Ferrara v. United States, 456 F.3d 278, 292 (1st Cir. 2006) (given "automatic discovery" rules, "The government's obligation to disclose ... can hardly be doubted").

The only remaining question is that left open in Scott - whether Ms. Hallinan's admission waived these claims. 467 Mass. at 359. In Commonwealth v. Fanelli, 412 Mass. 497 (1992), a non-Brady case, this Court opined that an admission obviates pre-plea violations that are "not logically inconsistent with the valid establishment of factual guilt[.]" Id. at 500-01 (citations omitted). Applying this reasoning in a Brady context, because the suppressed evidence

[3] Some courts interpret Ruiz as not foreclosing a challenge to a guilty plea when the prosecution failed to disclose exculpatory evidence. See U.S. v. Fisher, 711 F. 3 d 460, 465 n. 2 (4th Cir. 2013); State v. Huebler, 275 p. 3d 91, 96-97 (Nev. 2012); Medel v. State, 184 P.3d 1226, 1234-35 (Utah 2008); McCann v. Mangialardi, 337 F.3d 782, 788 (7th Cir. 2003). Contrast U.S. v. Mathur, 624 F.3d 498, 507 (1st Cir. 2010); U.S. v. Conroy, 567 F.3d 174, 179 (5th Cir. 2009).

affected the breath test, it directly impacted the establishment of factual guilt. Thus, relief is not foreclosed by Fanelli.

This Court should clarify that Brady principles require pre-plea disclosure of exculpatory information. A holding to the contrary will only encourage systemic violations of this nature to persist. Sanchez v. United States, 50 F.3d 1448, 1453 (9th Cir.1995) ("if a defendant may not raise a Brady claim after a guilty plea, prosecutors may be tempted to deliberately withhold exculpatory information as part of an attempt to elicit guilty pleas").

Obliging the government to furnish exculpatory evidence before a plea and granting relief when it does not conform to this Court's construction of Art. 12 as broader than the U.S. constitution when its wording supports it. See, e.g., Commonwealth v. Mavredakis, 430 Mass. 848 (2000). The Art. 12 right to "all proofs favorable" supports the requirement of pre-plea discovery of exculpatory evidence.

IV. THE COMMONWEALTH IS JUDICIALLY ESTOPPED FROM ASSERTING THAT ANY BREATH TEST DURING THE EXCLUSION PERIOD WAS ADMISSIBLE.

Judicial estoppel prevents a party from arguing in contradiction of a prior position, which prior position the court accepted. Blanchette v. School Comm., 427 Mass. 176, 184 (1998). Below, the Commonwealth advanced arguments which it was estopped from making. First, it contradicted its position that OAT's misconduct necessitated exclusion of all breath tests by asserting that Ms. Hallinan is not entitled to relief because she cannot show mischief specific to hers. Add. 226; 259-260 ("[the defendant has] to point out specific things about [the] specific machine, and that hasn't been done here..."). Second, it argued relief was precluded because Ms. Hallinan "did not join the consolidated litigation," Add. 230. in contrast with its agreement to exclude all 9510 breath tests and notify all those affected, including Ms. Hallinan. Add. 53.[4] Third, it argued that Ms. Hallinan's admission waived this challenge,[5] Add. 230, a position contradicted by the Commonwealth's notice

[4] The doctrine of judicial estoppel is available to any party, not just those involved in the initial litigation. East Cambridge Sav. Bank v. Wheeler, 422 Mass. 621, 623 (1996).

[5] The Commonwealth described this point as moot given the purported strength of its case.

that individuals who "admitted to sufficient facts" may seek relief.[6]

Where the record shows irreconcilable positions, what remains is whether the court accepted those prior positions. It did. See Ananias I; Ananias II.

Judicial estoppel disposes of the issue, but it fails to address the Commonwealth's conduct in creating a path to relief it either intended to be a dead end or now endeavors to turn into one. "We will not countenance that sleight-of-hand. As we have said, 'the government must turn square corners when it undertakes a criminal prosecution.'" United States v. Melvin, 730 F.3d 29, 38 (1st Cir. 2013) (citations omitted). The Commonwealth breached the public trust in again bending those corners as it did in Dookhan and Farak.

V. A DEFENDANT WHO SUCCESSFULLY VACATES THEIR PLEA AS A RESULT OF OAT'S MISCONDUCT SHOULD NOT BE EXPOSED TO MORE PUNISHMENT THAN ORIGINALLY IMPOSED

"[A] defendant who [withdraws] a guilty plea as a consequence of [OAT's] misconduct is not doing so in the context of an ordinary criminal case," and a "return to the status quo ante would mean ignoring the

[6] The quoted language is in www.mass.gov/breathalyzer, which the notice incorporates by reference.

egregious misconduct of [OAT] and disregarding its impact on criminal defendants[.]" Bridgeman I, 471 Mass. at 472-473, 475. Given these considerations, "defendants who plead guilty to [OUI] offenses and subsequently are granted new trials based on [OAT's] misconduct [] (1) [should not] be charged with more serious offenses than those of which they initially were convicted; and (2) if convicted again, [should not] be given sentences longer than those that originally were imposed." Id. Further, "[[d]ouble jeopardy guarantees are] violated when punishment already exacted for an offense is not fully 'credited[.]'" North Carolina v. Pearce, 395 U.S. 711, 718 (1969). While a license loss may be non-punitive in other contexts, service of serial suspensions for the same offense is punitive. See, e.g., United States v. Halper, 490 U.S. 435, 448-449 (1989).

WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

Direct appellate review is appropriate where an appeal presents (1) questions of first impression or novel questions of law; (2) state or federal constitutional questions; or (3) questions of

substantial public interest. See Mass. R. App. P. 11(a). This case presents all three.

First, this case presents questions of first impression. This Court has not dealt with the issues raised in the Ananias litigation and has consequently considered neither whether OAT engaged in "egregiously impermissible" government misconduct nor whether this Court should create a "conclusive presumption" of misconduct. This case also addresses the question this Court left open in Scott: "whether a voluntary guilty plea constitutes a waiver of the right to seek a new trial on the grounds of either newly discovered evidence or prosecutorial nondisclosure." Id. at 361. It also addresses issues of misconduct flowing from the Commonwealth's decision to make arguments which it agreed it was judicially estopped from making. Finally, this case asks whether an individual who obtains relief pursuant to Ananias may face more serious charges and, if convicted again, additional penalties.

Second, this case presents questions involving whether constitutional due process concerns furnish a basis for relief either because OAT's conduct was "particularly pernicious," see Ferrara, 456 F.3d at

290; Scott, 467 Mass. at 346, or amounted to prosecutorial non-disclosure or newly discovered evidence, see Brady, 373 U.S. at 87; Tucceri, 412 Mass. at 404-405.

Third, these questions are of public interest; the Court has excluded breath test results for almost an eight-year period, impacting approximately 27,000 individuals. Defendants across the state have filed motions following the Ananias Orders. The public has an interest in a uniform standard for resolving these motions, which standard will also alleviate a strain on judicial resources.

Because consideration of all three factors demonstrates a need for direct review, Ms. Hallinan respectfully requests that this Honorable Court allow her application.

Respectfully submitted,
LINDSAY HALLINAN,
By her attorneys,

/s/ Murat Erkan
Murat Erkan (BBO# 637507)
Erkan & Associates, LLC
300 High Street
Andover, MA 01810
978-474-0054
murat@erkanlaw.com

/s/ Joseph D. Bernard

Joseph D. Bernard (BBO# 557986)
The Law Offices of Joseph
D. Bernard, P.C.
1 Monarch Place, Suite 1160
Springfield, MA 01144
413-731-9995
joe@bernardatlaw.com

May 2, 2022

CERTIFICATE OF COMPLIANCE

I hereby certify, under the penalties of perjury, that this brief complies with the Massachusetts Rules of Appellate Procedure that pertain to the filing of briefs and appendices, including, but not limited to:

> Rule 11(b) (applications for direct appellate review);
>
> Rule 16(a)(13) (addendum);
>
> Rule 16(e) (references to the record);
>
> Rule 18 (appendix to the briefs);
>
> Rule 20 (form and length of briefs, appendices, and other documents);
>
> Rule 21 (redaction).

Specifically, this brief was written in Courier, 12-point monospace font, and created on Google Docs and MS Word. The pages of non-excludable words contained in this argument section of the application for direct appellate review is 10 pages.

/s/ Murat Erkan
Murat Erkan

/s/ Joseph D. Bernard
Joseph D. Bernard

May 2, 2022

CERTIFICATE OF SERVICE

Pursuant to Massachusetts Rule of Appellate Procedure 13(e), I hereby certify under the penalties of perjury, that on May 2, 2022, I have made service of this Application for Direct Appellate Review filed in the matter entitled Commonwealth v. Lindsay Hallinan, 2022-P-0285, currently pending in the Appeals Court via the Court's Electronic Filing System upon counsel for the Commonwealth:

Catherine L. Semel
Assistant District Attorney for Essex County
Office of the District Attorney
Ten Federal Street
Salem, MA 01970
catherine.semel@massmail.state.ma.us

/s/ Murat Erkan
Murat Erkan

/s/ Joseph D. Bernard
Joseph D. Bernard

May 2, 2022

ADDENDUM