

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2026-0200

COMMONWEALTH

vs.

ROBERT ANDERSON¹

ORDER ALLOWING LEAVE TO APPEAL

Pursuant to the gatekeeper provision of G. L. c. 278, § 33E, before me is the defendant's application seeking leave to appeal from the denial of his first motion for a new trial. For the reasons set out below, the application is hereby **ALLOWED**.

Background. In 1975, a jury convicted the defendant of murder in the first degree, armed robbery, and illegal carrying of a firearm.² The defendant timely filed his notice of appeal, but his appointed counsel elected not to pursue the appeal, leading to its dismissal. In 1996, upon motion by new counsel, the defendant's direct appeal was reinstated, and in 1997 this

¹ In 1986 the defendant changed his name to Marlo Dondegable. The caption in the case refers to him as Robert Anderson, reflecting the indictments. See Commonwealth v. Anderson, 425 Mass. 685, 685 n.1 (1997).

² Two co-defendants were tried separately, and both also were convicted of murder in the first degree; in 2024 this court affirmed the grant of a new trial to one of the codefendants. See Commonwealth v. Gaines, 494 Mass. 525, 527 (2024).

court vacated the defendant's armed robbery conviction and affirmed his murder conviction. See Commonwealth v. Anderson, 425 Mass. 685, 686 (1997).

On May 28, 2024, the defendant filed a motion for new trial. Therein he argued, among other things, that the prosecution failed to correct false testimony and turn over exculpatory evidence, and that new expert evidence concerning the reliability of confessions and eyewitness identifications merited a new trial. A nonevidentiary hearing was held before a judge of the Superior Court on August 22, 2025, and on March 13, 2026, that judge, who was not the trial judge, denied the defendant's motion. The defendant timely filed his gatekeeper application seeking leave to appeal that denial.

Discussion. Under the gatekeeper provision of G. L. c. 278, § 33E, a defendant whose conviction for murder in the first degree has been affirmed by this court following plenary review may not appeal from the denial of a post-conviction motion "unless the appeal is allowed by a single justice of the supreme judicial court on the ground that it presents a new and substantial question which ought to be determined by the full court." G. L. c. 278, § 33E. "The bar for establishing that an issue is 'substantial' in the context of the gatekeeper provision of § 33E is not high. It must only be a meritorious issue in the sense of being worthy of consideration by an

appellate court." Commonwealth v. Gunter, 459 Mass. 480, 487 (2011). Establishing that an issue is new "presents a more significant hurdle," as "[a]n issue is not 'new' within the meaning of G. L. c. 278, § 33E, where either it has already been addressed, or where it could have been addressed had the defendant properly raised it at trial or on direct review" (citations and quotations omitted). Gunter, 459 Mass. at 487.

After reviewing the parties' filings, I conclude that the defendant's application presents issues that are both new and substantial under G. L. c. 278, § 33E. Accordingly, it is therefore ordered that:

1. the defendant's application under the gatekeeper provision of G. L. c. 278, § 33E, for leave to appeal the denial of his motion for a new trial is allowed; and
2. the Suffolk County Superior Court Criminal Clerk's Office shall assemble forthwith the record in docket no. 7584CR90768 and transmit same to the Clerk's Office of the Supreme Judicial Court for the Commonwealth, John Adams Courthouse, One Pemberton Square, Room 1-400, Boston, Massachusetts 02108.

/s/ Gabrielle Wolohojian
Gabrielle Wolohojian
Associate Justice

Entered: August 21, 2026