

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT  
NO.

APPEALS COURT  
2022-P-1177

COMMONWEALTH

v.

WILLIAM E. BERRY

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ON APPEAL FROM JUDGEMENTS OF THE SUFFOLK SUPERIOR  
COURT AND FROM THE DENIAL OF MOTION FOR NEW TRIAL

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APPLICATION FOR DIRECT APPELLATE REVIEW  
WILLIAM E. BERRY

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JANUARY 2023

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	3
APPLICATION FOR DIRECT APPELLATE REVIEW.....	5
MEMORANDUM IN SUPPORT OF APPLICATION FOR DIRECT APPELLATE REVIEW.....	6
INTRODUCTION.....	6
STATEMENT OF PRIOR PROCEEDINGS.....	7
STATEMENT OF FACTS RELEVANT TO THE APPEAL.....	8
ISSUE OF LAW ON APPEAL.....	19
ARGUMENT.....	20
• Trial counsel provided ineffective assistance by failing to consult experts to support a defense that Alice consented to have sex with Mr. Berry, why Mr. Berry believed she did and why she could not recall having done so.....	20
REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE.....	28
CERTIFICATE OF COMPLIANCE.....	29
CERTIFICATE OF SERVICE.....	29
APPENDIX.....	30

## TABLE OF AUTHORITIES

### Cases

Commonwealth v. Blache, 450 Mass. 583 (2008).....	7, 20, 21
Commonwealth v. Epps, 474 Mass. 743 (2016).....	7, 24, 28
Commonwealth v. Gomes, 470 Mass. 352 (2015).....	20
Commonwealth v. Kolenovic, 471 Mass. 664 (2015).....	7, 27, 28
Commonwealth v. LaBrie, 473 Mass. 754 (2016).....	23
Commonwealth v. Lane, 462 Mass. 591, 596 (2012).....	22, 23
Commonwealth v. Lang, 473 Mass. 1 (2015).....	23
Commonwealth v. Millien, 474 Mass. 417 (2016).....	26
Commonwealth v. Pope, 489 Mass. 790 (2022).....	20
Commonwealth v. Roberio, 428 Mass. 278 (1998).....	24
Commonwealth v. Sherman, 481 Mass. 464 (2019).....	23, 24
Commonwealth v. Zagrodny, 443 Mass. 93 (2004).....	22

Wiggins v. Smith, 539 U.S. 510 (2003).....	23
---	----

#### Statutes

G.L. c. 265 § 22.....	7
G.L. c. 266 § 14.....	7
G.L. c. 266 § 16.....	7

#### Rules

Mass.R.App.P. 11.....	5
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SUPREME JUDICIAL COURT  
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v.

WILLIAM E. BERRY

APPLICATION FOR DIRECT APPELLATE REVIEW

Now comes the defendant in the above-entitled cases and  
applies, pursuant to Mass.R.App.P. 11, for direct appellate review of  
the issues raised in the appeal of this case.

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT  
NO.

APPEALS COURT  
2022-P-1177

COMMONWEALTH

v.

WILLIAM E. BERRY

MEMORANDUM IN SUPPORT OF APPLICATION FOR DIRECT  
APPELLATE REVIEW

INTRODUCTION

Mr. Berry was convicted of breaking into a home at night and rape.<sup>1</sup> (April 15/99-100) The woman, “Alice,” was intoxicated when she went to sleep.<sup>2</sup> (April 13/70-71) After she woke up in bed with Mr. Berry, she told a friend, “I brought somebody home last night.” (April 13/144) Her friend told her she hadn’t. (April 13/144, line 22) Alice adopted that position. Mr. Berry testified how they met and how he had come to be in bed with her. (April 14/129-130) The case relied on whether the jury believed Mr. Berry or Alice. Nevertheless, defense counsel failed even to consult an expert on memory and intoxication. By enlisting expert

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<sup>1</sup> The transcripts volumes are cited by the 2016 trial dates and page as ([date]/[page]). The attached appendix is cited by page number as (R. )

<sup>2</sup> Alice is a pseudonym. G.L. c. 265 §24C.

evidence on memory and intoxication trial counsel could have helped square Mr. Berry's testimony with Alice's perception of events and would have provided substantial support for Mr. Berry's defense under Blache.<sup>3</sup>

Mr. Berry submits his motion for new trial was denied because the motion judge failed to properly analyze ineffective assistance e.g., ignoring the role of pretrial investigation, and did not find the need "to do justice" as instructed in this Court's holding in Epps.<sup>4</sup> The trial court's decision appears overly concerned with avoiding "what hindsight may reveal" as discussed in cases like Kolenovic.<sup>5</sup> (R. 146) Direct Appellate Review is sought to address the proper analysis of the ineffective assistance of counsel issue.

#### STATEMENT OF PRIOR PROCEEDINGS

Mr. Berry is appealing the April 2016 jury trial conviction for the (a) aggravated rape (G.L. c. 265 § 22(a)); (b) aggravated burglary (G.L. c. 266 § 14); and (c) breaking and entering at night with intent to commit a felony (G.L. c. 266 § 16). (April. 15/99-100) The trial court (Gaziano, J.) sentenced Mr. Berry to 12-16

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<sup>3</sup> Commonwealth v. Blache, 450 Mass. 583, 594-595, fn. 19 (2008)(the Commonwealth's burden to prove that the defendant knew or reasonably should have known of the victim's incapacity due to intoxication)

<sup>4</sup> Commonwealth v. Epps, 474 Mass. 743, 766-767 (2016)(an ineffective assistance case transferred from the Appeals Court)

<sup>5</sup> Commonwealth v. Kolenovic, 471 Mass. 664, 774 (2015)

years in prison for aggravated rape.<sup>6</sup> (April 19/21) On April 10, 2019, the Appeals Court stayed the appeal pending the resolution of a motion for new trial. The motion for new trial process took some time given the retirement of one of the experts.<sup>7</sup>

On February 28, 2022, Mr. Berry filed a final “amended” version of his motion for new trial.<sup>8</sup> (R. 40) The motion judge (Ham, J.) held a nonevidentiary hearing on August 10, 2022. (R. 41) On October 5, 2022, Justice Ham denied the motion for new trial. (R. 137) On December 6, 2022, the Appeals Court entered the consolidated appeal from the convictions and from the denial of the motion for new trial (22-P-1177).

#### STATEMENT OF FACTS RELEVANT TO THE APPEAL

On Saturday, August 23, 2014, a 25-year-old graduate student, "Alice," was living in a first-floor apartment in Allston. (April 13/44-46, 49) On that evening at around 7-7:30 p.m., Alice's classmate, Caitlin, came over so the two of them could

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<sup>6</sup> The trial court sentenced Mr. Berry for aggravated burglary to 8 years of probation from and after his aggravated rape sentence. Id. The Court filed the breaking and entering conviction as duplicative to the conviction for aggravated burglary. Id.

<sup>7</sup> In his appended affidavits, trial counsel mentions “Dr. Allan J. Waldman,” who has retired, his report withdrawn, replaced by Dr. Alan A. Wartenberg and not considered by the motion judge in her decision. (R. 131 ¶ 6)

<sup>8</sup> The motion presented the issue of ineffective assistance of counsel as well as four other issues.

go out with about 10 other people from their graduate school program.<sup>9</sup> (April 13/64-66) Alice had a glass of wine with Caitlin and they left the apartment "close to nine." (April 13/66)

They went to another apartment on Mission Hill. (April 13/67) There Alice had two "very strong" drinks. Id. at lines 24-25 "Feeling the effects of alcohol," Alice left Mission Hill at between 10 and 10:30 p.m. (April 13/68) Alice then went to "The Greatest Bar...on Friend Street, near the Boston Garden." Id. At the bar Alice had 4-5 more drinks. (April 13/68-69)

Alice left the bar with Caitlyn at 1:30 a.m. (then August 24, 2014) and got home at around 1:45 a.m. (April 13/69-70) Alice managed to use her credit card to pay for the cab. (April 13/157) Yet Alice claimed to be so intoxicated that she could not find her apartment keys that were in her purse. (April 13/70-71) Instead Alice tried calling her roommate, Katelyn, to let them in.<sup>10</sup> (April 13/70)

Katelyn was apparently asleep when Alice got home. (April 13/71, line 23) Katelyn did not answer the phone but after Alice was "buzzing a lot" Katelyn did

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<sup>9</sup> "Caitlin" was Alice's classmate. "Katelin" was Alice's roommate.

<sup>10</sup> Alice shared the apartment with two roommates: Katelyn and Hillary. (April 13/47) Hillary was not home, but Katelyn was home. (April 13/58, 70-71) Before Katelyn went to sleep that night, she locked her bedroom windows and the common area windows. (April 13/190-191) Everyone was responsible for locking their own bedroom windows. (April 13/191) Katelyn also made sure the front and back doors were locked. (April 13/191)

let them in. (April 13/71-72) Katelyn heard them buzzing at 1:53 a.m. (April 13/190) Alice and Caitlin entered alone.<sup>11</sup> (April 13/72, 193)

Alice was very intoxicated when she got home and does not remember going to sleep. Id. At trial she did not remember anyone buzz the door in the middle of the night. Id. Nor did she remember anyone coming into her apartment in the middle of the night. (April 13/73)

Alice's friend, Caitlin, remembers that when they got home Alice was "barely functional, like I am supporting her as we walk, and I'm taking care of her belongings." (April 13/135) Caitlin put Alice to bed. (April 13/158) Caitlin then went to sleep at around 2:15 a.m. (April 13/163) She slept in the living room and did not hear any disturbing sounds that night. (April 13/142-143)

Alice remembered waking up the morning of August 24, 2014 at around 7 a.m. (April 13/92-93) She was "probably not" yet "stone cold sober" from the night before. (April 13/85) Mr. Berry was spooning her and his penis was inside her vagina.<sup>12</sup> (April 13/73-74) She told him to "stop." (April 13/74) He did not immediately stop. Id. She told him again to stop. Id. After a "couple of seconds. I mean twenty seconds maybe" he stopped. Id. She then pushed him off of her. Id.

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<sup>11</sup> Before Katelyn went back to sleep that morning, she observed the front door of the apartment was closed. (April 13/205) She also observed that the door of the main entrance had "slammed shut" as it "always does." (April 13/ 203, lines 12-15)

<sup>12</sup> Caitlin testified that Alice told her Mr. Berry was "cuddling her." (April 13/174 lines 16-20)

She did not remember what he did next, nor could she recall whether he wore a condom or ejaculated. (April 13/74-75)

Alice got out of bed first. Id. She "kind of jumped up and turned around and [told him] to leave." Id. He turned from her and started putting on his clothes. Id. He dressed, grabbed his backpack, and left. (April 13/76)

Alice then went to her friend Caitlin. (April 13/79) Alice remembered Caitlin having been asleep in the living room.<sup>13</sup> (April 13/79) Alice woke Caitlin and asked her if she (Alice) had brought someone home. Id. Alice did not think she had brought someone home. (April 13/80) Alice remembers telling Caitlin that she "woke up with somebody having sex with [her] that [she] didn't know." Id. Caitlin remembered Alice telling her, "I brought somebody home last night." (April 13/144, lines 19-20) Caitlin told Alice, "No, you didn't." (April 13/144, line 22) Alice then said, "Yes, I did, he just left." (April 13/144-145) To which Caitlin replied, "I put you to bed last night. I put you to bed alone." (April 13/145, lines 3-4) At that Caitlin testified to having seen "tearful" "realization hitting [Alice's] face." (April 13/145-146)

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<sup>13</sup> Caitlin claimed to have awoken at the sound of Mr. Berry's voice. (April 13/163) Right before he closed the apartment door, she heard Mr. Berry say, in an "annoyed" voice, "Okay, see you later Kate." (April 13/143) Alice remembered Mr. Berry calling her, "Katelin" and said "Katelin, it's okay." (April 13/81)

Caitlin remembered Alice wondering if someone had knocked on her window and she let them in the door. (April 13/166, lines 8-11) Alice had in the past let someone she knew in after the person knocked on the window. (April 13/169, lines 16-19, 180) However, neither Caitlin nor Katelyn remembered letting anyone in the apartment that night. (April 13/179, 193) Alice testified that, "It would be very shocking to me if I got up and let anyone in the door." (April 13/119, lines 22-24) Later that day, Alice and her mother went to a hospital where she was examined by a Sexual Assault Nurse Examiner (SANE). (April 13/85)

The police checked all the windows and doors of Alice's home and found no evidence of forced entry. (April 14/36-37) The door to Alice's apartment "intermittently" failed to close properly. (April 13/62) Nevertheless, the evidence in this case was that the door to Alice's apartment was closed after she got home on August 24, 2014. (April 13/205, lines 3-10)

#### Mr. Berry's police interview

Exhibit 21 is the video of Mr. Berry's interview with police. Mr. Berry was interviewed by police on Thursday December 4, 2014. At the time of the interview he had, just that Summer, started sharing a space with his fiancé. Mr. Berry and his fiancé had been together since March 2014. They met through mutual friends. They were in love even though they fought all the time. Mr. Berry planned to give her his grandmother's wedding ring. He told police he was faithful.



Mr. Berry denied committing any breaking and entering in Brighton.<sup>14</sup> He denied cheating on his fiancé with someone in Brighton. When shown a picture of Alice, Mr. Berry said he did not recognize her. The police then confronted him with "DNA." Mr. Berry became upset and demanded to know if he was being charged with a sexual assault. Apparently, another officer mentioned a sexual assault to Mr. Berry, and Mr. Berry wanted to know if that was what the DNA was about.

The police told Mr. Berry that his DNA was found inside of Alice. Mr. Berry said that was "absolutely impossible." The police responded to him that it was "literally the most possible thing."

#### Mr. Berry's trial testimony

Mr. Berry was 41 years old at trial. (April 14/125) He was a welder who did artistic welding. (April 14/125) He described how he and Alice first met. (April 14/127-128) He had seen her at night spots in the area. (April 14/127) One night he saw her on the street. (April 14/128) He described the first time they met:

I saw some guy that was bugging her and I offered to get her a cab, and she said she lived right around the corner, so I said I could walk you home. I walked her home. She was pretty tipsy, like she had to put her arm around me, I put my arm around her to support her. While we were talking we – you

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<sup>14</sup> Mr. Berry denied any significant connection with Brighton except for his fiancé's friend, Eliza, who lived there on Allston Street. Mr. Berry also believed that whoever recently robbed him was from Brighton. He denied any knowledge of Harvard Terrace in Brighton.

know, I told her about the art studio and the art shows that I'm involved with, and like a party that was in the area.

She told me that I could text her, but I told her my cell phone was busted.

And she said that I could, if I was in the area, I could knock on her window if the light was on. And you know, we were hanging out on her porch for a little while.

(April 14/128) They were not intimate at the first meeting. Id.

Mr. Berry described what happened on August 24, 2014. (April 14/129-130)

He was walking down Alice's street,

I could actually see the light in her bedroom from Harvard Ave., because that street is real short, and it's the first house on the right, I do believe. I went to her house, I knocked on the window. She looked out the window, saw it was me, came outside. We hung out on the porch. We talked some more. We started making out.

Id. Alice was not "completely wasted" but she was as drunk as he was when they first met. (April 14/155-156) Mr. Berry said they had sex three times that night.

(April 14/131-132)

In the morning they had sex again. (April 14/132) He had used a condom only the first time they had sex. Id. Alice asked him that morning if he was using a condom. Id. He said no. Id. Alice got out of bed and was really upset. Id. She told Mr. Berry, "I want you to go. You should just go." Id.

Mr. Berry got dressed. (April 14/132-133) He asked her if she wanted to go for breakfast. Id. She said, "No, you should just go right now." (April 14/133) He said, "Okay then" and left out the front door. Id.

On the day he was interviewed by police Mr. Berry had called 911 himself to report a breaking and entering he suffered. (April 14/135) When he was shown Alice's picture, he denied knowing her and even denied knowing Alice after being confronted with the DNA evidence. (April 14/136-137) He denied his connection to Alice because he did not want his girlfriend, Erica, who was "super jealous," to find out. (April 14/138, 144)

Mr. Berry admits he lied to police to protect his relationship with Erica.<sup>15</sup> (April 14/149) He explained, "I'm not supposed to be anywhere near [where Alice lives] without Erica with me. That was part of the whole us getting back together. She's crazy." (April 14/146) "I was specifically lying to the police to protect my relationship with Erica. We were engaged and I was terrified of losing her. I was very much in love with her." (April 14/149)

### The defense

In closing, defense counsel pointed out there was no evidence of forced entry. (April 15/25-26) Counsel argued that the sex was consensual. (April 15/27-

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<sup>15</sup> Mr. Berry's longtime friend, Catherine Burns, described his relationship with Erica. (April 14/110-111, 11-120) Ms. Burns had known Mr. Berry for about 20 years. (April 14/108) He was like a brother to Ms. Burns; never romantic. (April 14/116) Ms. Burns attested that Mr. Berry was in love with Erica and wanted to stay with her. (April 14/119-120) However, his relationship with Erica in August 2014 was not a healthy one. (April 14/111, 120) It was "stormy." *Id.* Erica has a bad temper. (April 14/122) Erica was "hotheaded" and would get violent towards Mr. Berry. (April 14/110)

28) Counsel argued that Alice maintained her accusation because she was afraid to tell her mother and Caitlin that she had unprotected sex with someone she was not dating. Id. at 18-19. Mr. Berry had denied to police that he had consensual sex with Alice because he had an "insanely jealous" girlfriend. Id. at 27

#### Post-conviction expert evidence

Postconviction counsel, secured the opinion of two well-qualified experts in relevant fields, Dr. Deryn Strange and Dr. Alan Wartenberg. (R. 43, 79) Dr.

Strange's report identifies numerous examples of suggestive influences in this case that in her view "could have led to the development and maintenance of a distorted memory" on Alice's part about the events in question. (R. 47-51) For example, Dr.

Strange discusses "Confidence Malleability."<sup>16</sup> (R. 48) Dr. Strange reports,

confidence is easily manipulated and that manipulation also affects people's memory. Alice said, "I think in the first moments to minutes I was confused, and didn't really know what had happened. And so I went to my friend, Caitlin Chiupka, and told her." (April 13/121). This is a clear admission that she was unclear about the events of the evening and accepted what she was told by her friend. Indeed, she told her friend that she "bought someone home last night" and initially insisted she did again after being told "no you didn't" (Vol II, 144-145). As a result, later we see her trying to work out alternative explanations, "maybe somebody knocked on the window and she let him in the door." (April 13/166) This shows her uncertainty. She also then states, "It would be very shocking to me if I got up and let anyone in the door." (April 13/119) As if she might be trying to convince herself that the prevailing theory of the night is correct.

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<sup>16</sup> "Confidence malleability typically refers to the tendency for an eyewitness to become more (or less) confident in his or her identification as a function of events that occur after the identification, but it applies broadly to memory." (R. 48)

(R. 48) Dr. Strange discussed Alice's alcohol consumption on memory. (R. 49) Dr.

Strange states,

compared with sober participants...severely intoxicated participants displayed a greater tendency to go along with suggestive cues compared with sober participants. Thus, intoxication impaired memory and increased suggestibility during an immediate interview, and both effects persisted when sober again. Finally, in a survey of people who had experienced an alcohol blackout—designed to determine how they begin to reconstruct what happened to them during the blackout...‘the data show that people's desire to ‘fill in the blanks’ can lead them to rely on rather unreliable sources, and may also encourage them to adopt weaker source-monitoring criteria. Indeed, in at least some cases reconstructing blackouts appears to lead to the development of false beliefs or memories.’

(R. 49)(emphasis added)(citations omitted) Dr. Strange concludes, “Based on my review and analysis of the documents and materials with which I was provided, it is my opinion as a memory expert that there were suggestive influences in this case which could have led to the development and maintenance of a distorted memory.”

(R. 51) Dr. Strange's opinions squares with Dr. Wartenberg's.

As to the issue of Alice's memory, Dr. Wartenberg corroborates Dr. Strange.

Dr. Wartenberg explains,

the phenomenon of confabulation, where the individual may incorporate the memories and versions of event recounted by others, including friends, witnesses or even police officers or others who are involved in interrogating the individual, often by giving their own interpretation of what they believed must have happened. Confabulation of memory can also occur internally, where individuals who cannot remember all of an event will ‘fill in the holes’ of their memory with an accounting of how they believe they would likely have or must have behaved in those circumstances... It is very difficult for individuals to separate true recovered memories from confabulated memories, and often their recollection of the event is some combination of things they

actually remember and memories that may have been suggested, or even 'planted,' by other individuals.

(R. 82)

Dr. Wartenberg explains "state dependent memory,"

It appears that the memories are formed but may be stored in places that are not accessible to the individual when they are in their normal and sober state. Some patients may remember the prior events when they become intoxicated again, a process called "state dependent memory."

(R. 83) This maybe why Alice did not remember her prior drunken encounter with Mr. Berry while she was sober.

Dr. Wartenberg submits, "The primary issue in this case revolves around the question as to whether Alice. was in the midst of an alcohol-related amnestic period, colloquially known as a 'blackout,' during the sexual encounter with Mr. Berry." (R. 81) He concludes, "It is my opinion, to a reasonable degree of medical certainty that Alice was having an 'en bloc' or total alcohol amnestic event following heavy drinking on the night of August 23-24." (R. 83) In support, Dr. Wartenberg explains,

Alcoholic amnestic episodes occur most commonly when individuals reach a high alcohol level very quickly...Alice had a significant alcohol level. This is also supported by her signs of intoxication at the time that she went home and arrived at her apartment. It also appears that this was a complete blackout (en bloc) since there was initially virtually no retained memory of the events. The fact that she did not remember even arriving at home or getting to bed is further evidence of the depth of this amnestic event.

(R. 82) Admittedly, Dr. Wartenberg did not examine Alice but his observations and conclusions had evidentiary support.

Dr. Wartenberg explains Alice's experiencing an "alcohol amnestic event" relevant to Mr. Berry's perception of Alice,

An individual who is in an alcohol-associated amnestic episode may appear totally conscious, and function as they normally do. If they are relatively tolerant to the effects of alcohol, signs of impairment (such as imbalance, clumsy gait, slurred speech) may be partially or completely absent. There are case reports of intoxicated surgeons operating on patients, lawyers expertly arguing in court and even pilots flying aircraft during blackouts. These individuals had no memory of having carried out these functions, even though all of those around them could not tell any difference in their behavior or their skills. I have personally witnessed this on scores of occasions with intoxicated patients.

(R. 81-82) "It is not uncommon for individuals who are functioning during amnestic episodes to appear normal, or near normal to casual observers, or even to trained medical personnel." (R. 83) Mr. Berry, as an "untrained lay" observer would not have been capable of determining the level of Alice's impairment. (R. 83) Especially, since he did not see how much she had consumed. This explanation of the counterintuitive yet actual phenomena of memory and intoxication was what trial counsel failed to present or even consult experts on.

### ISSUE OF LAW ON APPEAL

Whether the failure of trial counsel, to consult relevant experts whose opinions about memory and intoxication would have (1) squared Mr. Berry's testimony with that of Alice and (2) would have provided substantial support of his

defense under Blache,<sup>17</sup> deprived Mr. Berry of a substantial defense. This issue is properly preserved for appeal as Mr. Berry raised it before the trial court via a motion for new trial.<sup>18</sup>

### ARGUMENT

- TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE BY FAILING TO CONSULT EXPERTS TO SUPPORT A DEFENSE THAT ALICE CONSENTED TO HAVE SEX WITH HIM, WHY MR. BERRY BELIEVED SHE DID AND WHY SHE COULD NOT RECALL HAVING DONE SO

Mr. Berry told the jury that they had met before, he stopped by Alice's apartment, they talked, and they had consensual sex. (April 14/129-132) Alice's account, of course, included none of those events, but she had drunk heavily that night, consuming seven or eight drinks, including two "very strong" ones, over less than five hours. (April 13/66-73, 135, 205) Given the discrepancy between these two versions of events, the defense would have benefited from any way to reconcile them. Expert testimony could have bridged that divide.<sup>19</sup>

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<sup>17</sup> Commonwealth v. Blache, 450 Mass. 583, 594-595, fn. 19 (2008) ("the Commonwealth has not proved that the defendant knew or reasonably should have known of such incapacity")

<sup>18</sup> Review of this matter will be de novo, since the motion judge was not the trial judge and there was no evidentiary hearing, only documentary evidence. Commonwealth v. Pope, 489 Mass. 790, 793-794 (2022)

<sup>19</sup> Problems with human memory was an accepted concept by the time of trial in this case. Compare Commonwealth v. Gomes, 470 Mass. 352, 369 (2015)



The expert testimony, *supra*, would have greatly assisted Mr. Berry in how the jury considered the instruction given pursuant to Commonwealth v. Blache, 450 Mass. 583, 594-595, fn. 19 (2008) The trial court instructed the jury under Blache, *supra*. (April 15/76-77) With the aid of expert testimony, *supra*, the jury would have had reasonable doubt as to whether Mr. Berry, “knew or reasonably should have known that the complainant’s condition rendered her incapable of consenting.” (April 15/77, lines 3-6)

That Alice appeared functional was evident. Alice was able to use her credit card, presumably in the little machines provided at the back of a cab, to pay for the cab home. (April 13/133, lines 16-20) Alice managed to speak intelligibly to Katelin, asking to be let in. (April 13/190, lines 11-16) Alice managed to get her own shoes off. (April 13/91, lines 18-19) Mr. Berry did admit that he knew Alice had been drinking. (April 14/155-156) However, there is no evidence that Mr. Berry knew just how much Alice had been drinking. She may very well have seemed functional to Mr. Berry.

The jury was presented with Alice who was very likable and believable and Mr. Berry who had already lied to police. Defense counsel needed to explain to the jury why they could believe what Mr. Berry said happened, despite the fact that Alice did not remember it. Expert testimony on “state dependent memory” could have eliminated the need to make this case a conflict of credibility. (R. 83) With that in

mind, the jury had reason to accept why Alice only remembered Mr. Berry when she was intoxicated.

The opinion of both experts, *supra*, describes the very same phenomena, explaining why Alice, instead of remembering events as Mr. Berry remembered, Alice adopts the version of events suggested to her by others. “It is extremely distressing for any individual to have large pieces of their recollection missing, and there is a natural tendency for that individual to ‘fill the holes’ in their memory.” (R. 82) Such a dynamic would have explained why Alice and Mr. Berry could have had such different accounts while not calling either a liar. It was ineffective for trial counsel not to have presented these phenomena to the jury via expert testimony.

Trial counsel, while claiming to have given “serious consideration to the pros and cons of having an expert on intoxication” or memory, decided on his own “not to use” any such expert, without even consulting one first. (R. 131 ¶¶ 4-5, 135 ¶¶ 5-7) Trial counsel seeks to shelter that omission as a “strategic decision,” which can constitute ineffective assistance of counsel only if it was “‘manifestly unreasonable’ when made.” Commonwealth v. Lane, 462 Mass. 591, 596 (2012), quoting Commonwealth v. Zagrodny, 443 Mass. 93, 102 (2004). Trial counsel’s effort to justify his decision to forgo even consulting an expert in this area fails for several reasons. To begin, even if “judges typically afford ‘some deference’ to counsel’s choice of trial tactics...the fact that a decision ‘could be characterized as [such] does

not, for that reason, render the decision immune from scrutiny.” Lane, 462 Mass. at 596 (citations omitted). Instead, “strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.” Wiggins v. Smith, 539 U.S. 510, 521 (2003) (citation omitted); accord Commonwealth v. LaBrie, 473 Mass. 754, 771 (2016).

The motion judge found that “the trial counsel ‘gave serious consideration to the pros and cons of having an expert on intoxication...and [was] very familiar with the literature and research involving perception and memory...[but] made the strategic decision not to use an expert.” (R. 152) The motion judge concluded that “Trial counsel made an informed and reasonable decision” to go forward without an expert. (R. 152) This conclusion is unreasonable. Trial counsel could not have made an “informed” decision on the topics of memory and intoxication without consulting an expert.

Here, the ample evidence of Alice’s intoxication “would lead a reasonable attorney to investigate further.” Wiggins, 539 U.S. at 527. Trial counsel erred here by “deciding against a defense that counsel had done nothing to investigate.”

Commonwealth v. Lang, 473 Mass. 1, 19 (2015) (Lenk, J., concurring). As the Supreme Judicial Court recognizes, the effect of an intoxicant on a person’s perception and memory requires expert help to understand. See Commonwealth v.

Sherman, 481 Mass. 464, 477-78 (2019). As Dr. Strange notes, “Critically, some of these memory phenomena are outside, and indeed may run counter to, the knowledge and understanding of the common juror or layperson.” (R. 51) That is no less true for attorneys than it is for jurors. Trial counsel here was not entitled to rely solely on his lay understanding of the effect of alcohol intoxication and other memory phenomena, as described by the experts here, in deciding unilaterally not to pursue that path. See, e.g., Commonwealth v. Epps, 474 Mass. 743, 758 (2016) (recognizing that “[d]efense counsel has a professional obligation to investigate all potentially substantial defenses,” and holding that counsel erred in consulting only one expert who opined unfavorably without even reviewing medical records); Commonwealth v. Roberio, 428 Mass. 278, 279-80 (1998) (holding that counsel erred by failing to seek mental-health expert to investigate insanity defense).

In his most recent affidavit trial counsel continues to resist the effectiveness of expert opinion. (R. 135) Trial counsel claims

Dr. Wartenberg's report does not take into account how patently intoxicated the alleged victim was coming home with her friend and that the alleged victim entered her apartment with her friend and not with Mr. Berry. Testimony by Dr. Wartenberg would have had to overcome not only the testimony of the alleged victim but also testimony of the alleged victim's friend.

(R. 135 ¶ 9) This is plainly incorrect.

Dr. Wartenberg clearly addresses Alice’s level of intoxication. (R. 82) Dr. Wartenberg clearly addresses how Mr. Berry may have entered the apartment. (R.

81) Dr. Wartenberg addresses the testimony of Alice's friend, Caitlin. (R. 80-81) He does not have to "overcome" the testimony of Alice or any other witness because his opinion, like Dr. Strange's, works with these testimonies instead of having to be in a credibility contest with them. Again, Mr. Berry submits, the effective strategy would have been to have avoided the credibility contest trial counsel's strategy created. This would have allowed the jury to acquit Mr. Berry without disparaging anyone.

It is hard to see any inhibiting conflict between the chosen strategy that trial counsel outlined in his affidavit, (R. 131-132, ¶¶ 9-16), and one incorporating the opinion of Dr. Strange and Dr. Wartenberg. See Commonwealth v. Martin, 427 Mass. 816, 822 (1998). Even without the experts' testimony about the effect of Alice's intoxication on her memory, evidence of her intoxication was already ubiquitous at trial. Given that, trial counsel's chosen strategy – arguing that Alice consented to sex with Mr. Berry – presented exactly the same risk.

The difference, turning to the prejudice prong of the analysis, is that, armed with Dr. Strange's and Dr. Wartenberg's opinions, trial counsel could have persuaded the jury that Alice's liaison with Mr. Berry was consensual without insinuating, in effect, that she had fabricated a false rape claim to avoid embarrassment - trial counsel's theory of the case in his own words. (R. 131-132, ¶¶ 9, 16). That theory framed the case as a credibility contest between Alice - a young graduate student with a bright future ahead of her - and Mr. Berry - an older man who admitted that he

lied to police to hide his infidelity to his fiancé - forcing the jury to decide which was lying and which was telling the truth.

Trial counsel need not have put that choice - which plainly disfavored Mr. Berry - to the jury at all. Instead, had trial counsel sought out experts like Dr. Strange and Dr. Wartenberg, he could have offered the jury a way to reconcile Alice's and Mr. Berry's accounts, allowing the jury to acquit his client without branding Alice a liar in the process. See (April 15/21) To do that, the jury need only have had doubt as to whether Alice's memory of these events was mistaken given the effects of intoxication and was instead a false event having been suggested to her - a manifestly more reasonable argument.<sup>20</sup> In sum, "better work...might have accomplished something material for the defence," and trial counsel's failure to undertake it creates "serious doubt whether the jury verdict would have been the same had the defense [that Alice suffered from alcohol-induced amnesia and distorted memory] been presented." Commonwealth v. Millien, 474 Mass. 417, 431-33 (2016) ("defendant need not prove [defendant] would have been found not guilty if defense counsel had presented the jury with this ground of defense")

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<sup>20</sup> Dr. Strange discusses the "false event" having been "suggested" to Alice by her classmate, Caitlyn. (R. 46) Dr. Wartenberg also discusses this phenomenon as "confabulation" when the person relies on a version of events suggested by other people. (R. 82)

The motion judge dismisses Mr. Berry's post-conviction presentation as "hindsight" (R. 149) and as an "alternative theory" (R. 148-149); essentially Monday morning quarterbacking. The motion judge seems to be relying on language from cases like Commonwealth v. Kolenovic, 471 Mass. 664, 674-678 (2015). In Kolenovic this Court points out that (1) "a court may not apply the benefit of hindsight in assessing counsel's strategic choices" Id. at 678; and (2) a court must "review with some deference to avoid characterizing as unreasonable a defense that was merely unsuccessful." Id. at 673 That does not mean a court may not evaluate a counsel's past performance. Nor does it mean unsuccessful defenses are immune from post-conviction investigation into a substantial defense that could have been pursued by counsel but was not. That would eviscerate the right to effective counsel. In Kolenovic counsel did consult an expert and presented an expert at trial to argue the defendant was too intoxicated to premeditate or for the necessary intent. Id. at 698-699 Counsel made a reasoned choice not pursue an insanity defense. Id. at 670-671

In Mr. Berry's case counsel's theory was that the sex was consensual. (April 15/27-28) Counsel knew intoxication was an issue and he was familiar with the issue of memory. (R. 131 ¶ 4, 133 ¶ 5-6) Yet, he chose not to consult an expert. The expert opinions of Drs. Strange and Wartenberg would have supported the consensual sex theory and would not have been a wholly "alternative theory" as the motion judge

claims. Even if the use of experts does present an alternative theory, derived with the “benefit of hindsight,” that still leaves the problem that justice was not done. The “touchstone must be to do justice, and that requires [the Court] to order a new trial where there is a substantial risk of a miscarriage of justice because a defendant was deprived of a substantial defense, regardless whether the source of the deprivation is counsel's performance alone.” Epps, 474 Mass. at 766-767 Mr. Berry was deprived of a substantial defense and this Court should remedy it.

REASONS WHY DIRECT APPELLATE REVIEW  
IS APPROPRIATE

Direct appellate review is appropriate in this case because it presents a novel question of law under Article 12 and the 6<sup>th</sup> Amendment, i.e. how does the Court square its holding in cases like Epps<sup>21</sup> “to do justice” with the confusion of how to deal with what is revealed in “hindsight” by appellate counsel and the application of ineffective assistance analysis in cases like Kolenovic<sup>22</sup> that have been misinterpreted by motion judges who then give deference to the strategies of trial attorneys who failed to consult relevant experts before formulating a defense.

WILLIAM E. BERRY  
By his attorney:

/Michael A. Nam-Krane  
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PO BOX 301218

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<sup>21</sup> Commonwealth v. Epps, 474 Mass. 743, 766-767 (2016)

<sup>22</sup> Commonwealth v. Kolenovic, 471 Mass. 664, 674-678 (2015)



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CERTIFICATE OF COMPLIANCE

I, Michael A. Nam-Krane, hereby certify that the foregoing brief complies with the rules of court which pertain to the filing of briefs, including, but not limited to: 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); and Rule 21 (redaction). Compliance with the applicable word limit of Rule 20 was ascertained by use of Times New Roman size 14 font for a total of 1,997 words of argument.

/Michael A. Nam-Krane

CERTIFICATE OF SERVICE

I, Michael A. Nam-Krane, hereby certify that I have served a copy of the foregoing pleading by electronic filing to opposing counsel.

/Michael A. Nam-Krane

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT  
NO.

APPEALS COURT  
2022-P-1177

COMMONWEALTH

v.

WILLIAM E. BERRY

APPLICATION FOR DIRECT APPELLATE REVIEW

APPENDIX

TABLE OF  
CONTENTS

• Docket Entry Sheet.....	31
• Report of Dr. Deryn Strange, Ph.D.....	43
• CV of Dr. Deryn Strange, Ph.D.....	60
• Report of Dr. Alan A. Wartenberg, MD.....	79
• CV of Dr. Alan A. Wartenberg, MD.....	85
• Affidavits of Trial Counsel.....	131
• Memorandum and Order Denying Motion for New Trial.....	137

# 1584CR10117 Commonwealth vs. Berry, William E

- Case Type:  
Indictment
- Case Status:  
Open
- File Date:  
02/26/2015
- DCM Track:  
C - Most Complex
- Initiating Action:  
RAPE, AGGRAVATED c265 §22(a)
- Status Date:  
02/26/2015
- Case Judge:
- Next Event:

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

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### Party Charge Information

<ul style="list-style-type: none"> <li>• Berry, William E</li> <li>• - Defendant</li> <li>• Charge # 1:</li> <li>• 265/22/B-2 - Felony RAPE, AGGRAVATED c265 §22(a)</li> </ul>	
<ul style="list-style-type: none"> <li>• Original Charge</li> <li>• 265/22/B-2 RAPE, AGGRAVATED c265 §22(a) (Felony)</li> <li>• Indicted Charge</li> <li>• Amended Charge</li> </ul>	<b>Charge Disposition</b> Disposition Date Disposition 04/15/2016 Guilty Verdict
<ul style="list-style-type: none"> <li>• Berry, William E</li> <li>• - Defendant</li> <li>• Charge # 2:</li> <li>• 266/14/E-0 - Felony BURGLARY, UNARMED &amp; ASSAULT c266 §14</li> </ul>	
<ul style="list-style-type: none"> <li>• Original Charge</li> <li>• 266/14/E-0 BURGLARY, UNARMED &amp; ASSAULT c266 §14 (Felony)</li> <li>• Indicted Charge</li> <li>• Amended Charge</li> </ul>	<b>Charge Disposition</b> Disposition Date Disposition 04/15/2016 Guilty Verdict
<ul style="list-style-type: none"> <li>• Berry, William E</li> <li>• - Defendant</li> <li>• Charge # 3:</li> <li>• 266/16/A-1 - Felony B&amp;E BUILDING NIGHTTIME FOR FELONY c266 §16</li> </ul>	
<ul style="list-style-type: none"> <li>• Original Charge</li> <li>• 266/16/A-1 B&amp;E BUILDING NIGHTTIME FOR FELONY c266 §16 (Felony)</li> <li>• Indicted Charge</li> <li>• Amended Charge</li> </ul>	<b>Charge Disposition</b> Disposition Date Disposition 04/15/2016 Guilty Verdict

### Events

Date	Session	Location	Type	Event Judge	Result
03/17/2015 09:30 AM	Magistrate's Session		Arraignment		Held as Scheduled
04/08/2015 09:30 AM	Magistrate's Session		Pre-Trial Conference		Rescheduled
04/13/2015 09:00 AM	Criminal 1		Hearing for Appearance / Appointment of Counsel		Held as Scheduled
05/18/2015 09:30 AM	Magistrate's Session		Trial Assignment Conference		Held as Scheduled
05/27/2015 02:00 PM	Criminal 1		Hearing via Video Conference		Held as Scheduled
07/07/2015 09:00 AM	Criminal 1		Pre-Trial Hearing		Held as Scheduled
08/10/2015 09:00 AM	Criminal 1		Hearing		Held as Scheduled
08/13/2015 09:00 AM	Criminal 1		Hearing		Held as Scheduled
10/05/2015 02:00 PM	Criminal 2		Final Pre-Trial Conference		Rescheduled
10/19/2015 09:00 AM	Criminal 2		Jury Trial		Rescheduled
10/21/2015 09:30 AM	Magistrate's Session		Status Review		Not Held
10/27/2015 02:00 PM	Criminal 1	BOS-7th FL, CR 704 (SC)	Bail Hearing	Krupp, Hon. Peter B	Held as Scheduled
12/01/2015 09:00 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Pre-Trial Hearing		Held as Scheduled

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
01/12/2016 09:00 AM	Criminal 2		Final Pre-Trial Conference		Rescheduled
01/12/2016 09:00 AM	Criminal 2	BOS-7th FL, CR 713 (SC)	Motion Hearing	Tochka, Hon. Robert N	Held as Scheduled
01/12/2016 09:30 AM	Criminal 9	BOS-7th FL, CR 713 (SC)	Evidentiary Hearing on Suppression		Rescheduled
02/02/2016 09:00 AM	Criminal 2		Jury Trial		Rescheduled
04/04/2016 02:00 PM	Criminal 2	BOS-8th FL, CR 806 (SC)	Final Pre-Trial Conference		Held as Scheduled
04/11/2016 09:00 AM	Criminal 2	BOS-8th FL, CR 806 (SC)	Jury Trial		Held as Scheduled
04/12/2016 09:00 AM	Criminal 2	BOS-8th FL, CR 806 (SC)	Jury Trial	Gaziano, Frank M	Held as Scheduled
04/13/2016 09:00 AM	Criminal 2	BOS-8th FL, CR 806 (SC)	Jury Trial	Gaziano, Frank M	Held as Scheduled
04/14/2016 09:00 AM	Criminal 2	BOS-8th FL, CR 806 (SC)	Jury Trial	Gaziano, Frank M	Held as Scheduled
04/15/2016 09:00 AM	Criminal 2	BOS-8th FL, CR 806 (SC)	Jury Trial	Gaziano, Frank M	Held as Scheduled
04/19/2016 09:00 AM	Criminal 2	BOS-8th FL, CR 806 (SC)	Jury Trial	Gaziano, Frank M	Held as Scheduled
08/10/2022 10:00 AM	SDP-Unified Session		Hearing on Motion for New Trial	Ham, Hon. Catherine	Held as Scheduled

#### Ticklers

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Conversion Attorney Mismatch	02/26/2015	09/26/2015	1	
Pre-Trial Hearing	03/17/2015	03/17/2015	0	03/17/2015
Final Pre-Trial Conference	03/17/2015	02/26/2016	346	03/17/2015
Case Disposition	03/17/2015	03/11/2016	360	03/17/2015

#### Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
02/26/2015	Indictment returned	1	<a href="#">Image</a>
02/26/2015	MOTION by Commonwealth for arrest warrant to issue; filed & allowed (Ames, J)	2	
02/26/2015	Warrant on indictment issued		
02/26/2015	Warrant was entered onto the Warrant Management System 2/26/2015		
02/26/2015	Commonwealth files motion to seal Appendix A	3	
02/26/2015	MOTION (P#3) allowed (Ames, J). (SEALED)		
03/17/2015	Defendant brought into court. Warrant ordered recalled.		
03/17/2015	Warrant canceled on the Warrant Management System 3/17/2015		
03/17/2015	Committee for Public Counsel Services appointed, pursuant to Rule 53, Atty. K. Cusack.		
03/17/2015	Court inquires of Commonwealth if abuse, as defined in G.L. c.209A, s1, is alleged to have occurred immediately prior to or in connection with the charged offense(s).		
03/17/2015	Court finds NO abuse is alleged in connection with the charged offense(s). (G.L. 276, s56A)		
03/17/2015	Deft arraigned before Court		
03/17/2015	Deft waives reading of indictments		
03/17/2015	RE Offense 1:Plea of not guilty		
03/17/2015	RE Offense 2:Plea of not guilty		
03/17/2015	RE Offense 3:Plea of not guilty		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/17/2015	Bail set: \$1,000,000.00 with surety or in the alternative \$100,000.00 cash without prejudice. Bail Warning Read. Mittimus Issued. COB: 1. GPS monitoring. 2. Stay away- no contact direct or indirect with victim. 3. Curfew 9pm - 6am.		
03/17/2015	Commonwealth files Notice of Appearance of ADA Amy Martin.	4	
03/17/2015	Commonwealth files Statement of the Case.	5	
03/17/2015	Commonwealth files First Notice of Discovery.	6	
03/17/2015	Assigned to track "C" see scheduling order		
03/17/2015	Tracking deadlines Active since return date		
03/17/2015	Continued to 4/8/2015 for hearing Re: PTC by agreement.		
03/17/2015	Continued to 7/7/2015 for hearing Re: PTH by agreement.		
03/17/2015	Continued to 10/5/2015 for hearing Re: FPTC by agreement in Rm. 816 at 2pm.		
03/17/2015	Continued to 10/19/2015 for hearing Re: trial by agreement in Rm. 806. Kaczmarek, MAG - A. Martin, ADA - K. Cusack, Atty - JAVS		
03/17/2015	Case Tracking scheduling order; mailed 3/17/2015		
04/08/2015	Defendant brought into Court, case continued until 4/13/2015 by agreement for hearing Re: Counsel. Wilson, MAG - A. Martin, ADA - K. Cusack, Atty - JAVS		
04/13/2015	Defendant brought into court		
04/13/2015	Deft's oral motion to dismiss counsel, after hearing allowed		
04/13/2015	CPCS allowed to withdraw		
04/13/2015	Appointment of Counsel E Michael Sullivan, pursuant to Rule 53. Fee waived for this appt only		
04/13/2015	Continued to 5/18/2015 by agreement re new track. Jail list. Gaziano, J. - C. Bartoloni/A. Martin, ADA. - E. M. Sullivan, Atty. - JAVS.		
05/18/2015	Defendant brought into court		
05/18/2015	Pre-trial conference report filed	7	
05/18/2015	Continued to 5/27/2015 for hearing Re: Video Bail by agreement at 2pm. Kaczmarek, MAG - A. Martin, ADA - E. M. Sullivan, Atty - JAVS		
05/27/2015	Defendant on video at Nashua Street Jail. Hearing re bail		
05/27/2015	After hearing, Deft's oral motion for reduction of bail - denied. Locke, RAJ, - A Martin, ADA. - E. Michael Sullivan, Atty. - JAVS.		
07/07/2015	Deft not in court. Pre Trial hearing held		
07/07/2015	Commonwealth files Certificate of compliance regarding pre-trial discovery	8	
07/07/2015	Commonwealth files Motion to compel buccal swab of deft and memorandum of law and affidavit	9	
07/07/2015	Continued to 8/10/2015 at request of deft re motions. Roach, J. - A. Martin, ADA. E. Michael Sullivan, Atty. - JAVS		
08/10/2015	Defendant not in court.		
08/10/2015	After hearing P.#9 Allowed as endorsed trial Filed and Allowed, as endorsed		
08/10/2015	Continued to 8/13/2015 1st Session re: Taking Buccal Swab, Jail list Trial 2/2/16 Rm. 806 , FPTC 1/12/16 Rm. 806 Roach, J - A. Martin, ADA - E. Levine, Atty - JAVS		
08/10/2015	Commonwealth files Motion to Continue Trial , filed and ALLOWED, as endorsed	10	
08/13/2015	Defendant not present, case continued until 10/21/2015 by agreement re filing of motions(CM). Roach, J. - A. Martin, ADA. - E. Levine, Atty. - JAVS.		
10/02/2015	Event Result: The following event: Final Pre-Trial Conference scheduled for 10/05/2015 02:00 PM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date		
10/02/2015	Event Result: The following event: Jury Trial scheduled for 10/19/2015 09:00 AM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date		
10/21/2015	Event Result: Deft not in Court The following event: Status Review scheduled for 10/21/2015 09:30 AM has been resulted as follows:		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Result: Not Held Reason: Not reached by Court Wilson, MAG - A. Martin, ADA - E. Levine, Atty - JAVS		
10/27/2015	Event Result: The following event: Bail Hearing scheduled for 10/27/2015 02:00 PM has been resulted as follows: Result: Held as Scheduled		
10/27/2015	Defendant oral motion  for reduction of bail is denied		
12/01/2015	Event Result: Brought into court The following event: Pre-Trial Hearing scheduled for 12/01/2015 09:00 AM has been resulted as follows: Result: Held as Scheduled. Continued to 1/12/16 re motion to suppress(713, jail list). 12/14/15 out of court filing deadline, 12/31/15 Comm's response filing deadline Krupp, J. - A. Martin, ADA. - E. Levine, Atty. - JAVS		
12/22/2015	Defendant's Motion to suppress Defendant's Statement. w/affidavit	11	
01/12/2016	Event Result: The following event: Motion Hearing scheduled for 01/12/2016 09:00 AM has been resulted as follows: Result: Held as Scheduled  Defendant not in court; Motion to Suppress, P.#11 allowed; Commonwealth conceding suppression; Motion to Continue filed & allowed; 1/12/16 FPTH & 2/2/16 Trial dates cancelled. New FPTH of 4/4/16; New Trial of 4/11/16. Tochka, J. - E. Riley, ADA - E. Levine, Attny - ERD/JAVS		
03/09/2016	Defendant's Motion for Criminal Records filed.	12	
03/09/2016	Endorsement on Motion for funds , (#12.0): ALLOWED		
03/14/2016	Defendant's Motion to Provide the prospective jurors with the following questionnaire and to be followed with counsel asking follow up questions, filed	13	
04/04/2016	Event Result: The following event: Final Pre-Trial Conference scheduled for 04/04/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled		
04/04/2016	Commonwealth's Notice of Discovery (Third)	14	
04/04/2016	Commonwealth's Notice of Discovery (4th)	15	
04/04/2016	Commonwealth's Motion in limine to Allow First Complaint Witness	16	
04/04/2016	Commonwealth's Motion in limine to Include Redacted Portion of Defendant's Statement to Sexual Assault Unit Detectives	17	
04/04/2016	Commonwealth's Motion in limine to Admit Statements of ID Made by Victim	18	
04/04/2016	Commonwealth's Motion for CORI check of Jurors	19	
04/04/2016	Commonwealth's Request for Voir Dire Questions for Purposes of Jury Empanelment	20	
04/04/2016	Commonwealth's Motion in limine to Admit Defendant's Prior Convictions (Amended)	21	
04/04/2016	Commonwealth's Motion in limine to Preclude Inquiry into Victim's Past Sexual History	22	
04/04/2016	Commonwealth's Motion in limine regarding Admission of Testimony Regarding DNA Comparison	23	
04/04/2016	Defendant's Motion in limine regarding DNA	24	
04/04/2016	Defendant's Motion in limine to Preclude Indictment from the Jury	25	
04/11/2016	Event Result: The following event: Jury Trial scheduled for 04/11/2016 09:00 AM has been resulted as follows: Result: Held as Scheduled  Defendant brought into Court; Motions in limine heard; matter continued to 4/12/16 for Trial (Empanelment). Gaziano, J. - E.Riley, ADA - E.Levine, Attny - N.King, C/R.		
04/12/2016	Event Result: The following event: Jury Trial scheduled for 04/12/2016 09:00 AM has been resulted as follows: Result: Held as Scheduled  Defendant brought into Court; Empanelment begins; panel of fourteen (14) jurors selected. Matter continued to 4/13/16 for Trial. Gaziano, J. - E.Riley, ADA - E. Levine, Attny - N. King, C/R.		
04/13/2016	Event Result: The following event: Jury Trial scheduled for 04/13/2016 09:00 AM has been resulted as follows: Result: Held as Scheduled  Defendant brought into Court; Jury Sworn; Evidence begins; matter continued to 4/14/16 for continuation of Trial. Gaziano, J - L. Riley, ADA - E. Levine, Attny - N.King, C/R.		
04/14/2016	Event Result: The following event: Jury Trial scheduled for 04/14/2016 09:00 AM has been resulted as follows: Result: Held as Scheduled		
04/15/2016	The defendant is committed without bail for the following reason: Per Order of the Court.		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
04/15/2016	Issued on this date: Mittimus Without Bail Sent On: 04/15/2016 15:15:48	26	
04/15/2016	Verdict affirmed, verdict slp filed As to Offense #001 - guilty	27	
04/15/2016	Verdict affirmed, verdict slp filed As to offense #002: guilty	28	
04/15/2016	Verdict affirmed, verdict slp filed As to offense #003: guilty	29	
04/15/2016	Offense Disposition: Charge #1 RAPE, AGGRAVATED SERIOUS BODILY INJURY c265 §22(a) Date: 04/15/2016 Method: Jury Trial Code: Guilty Verdict Judge: Gaziano, Frank M  Charge #2 BURGLARY, UNARMED & ASSAULT c266 §14 Date: 04/15/2016 Method: Jury Trial Code: Guilty Verdict Judge: Gaziano, Frank M  Charge #3 B&E BUILDING NIGHTTIME FOR FELONY c266 §16 Date: 04/15/2016 Method: Jury Trial Code: Guilty Verdict Judge: Gaziano, Frank M		
04/15/2016	Event Result: The following event: Jury Trial scheduled for 04/15/2016 09:00 AM has been resulted as follows: Result: Held as Scheduled		
04/19/2016	Defendant notified of right of appeal to the Appellate Division of the Superior Court within ten (10) days.		
04/19/2016	Defendant notified of right of appeal to the Appeals Court within thirty (30) days.		
04/19/2016	Defendant warned as to submission of DNA G.L. c. 22E, § 3		
04/19/2016	Notice given to defendant of duty to register as a sex offender.		
04/19/2016	Defendant sentenced: Sentence Date: 04/19/2016 Judge: Gaziano, Frank M  Charge #: 1 RAPE, AGGRAVATED SERIOUS BODILY INJURY c265 §22(a) State Prison Sentence State Prison Sentence-Not Less Than: 12 Years, 0 Months, 0 Days  State Prison Sentence-Not More Than: 16 Years, 0 Months, 0 Days  Served Primary Charge  Committed to MCI - Cedar Junction (at Walpole)  Credits 501 Days		
04/19/2016	Issued on this date: Mitt For Sentence (First 6 charges) Sent On: 04/19/2016 10:41:36	30	
04/19/2016	Defendant sentenced: Sentence Date: 04/19/2016 Judge: Gaziano, Frank M  Charge #: 2 BURGLARY, UNARMED & ASSAULT c266 §14 Probation Probation Type: Risk/Need Probation Duration: 8 Years, 0 Months, 0 Days Start Date: 04/17/2028, End Date: 04/16/2036. Special conditions: 1) stay away from Alyssa Pecchatka, Katelin Roche, and Caitlin Chiupka.  Recurring Charges: Probation Fee assessed. Amount: 65.00 Assessed during term of probation: Monthly on Day: 1		
04/19/2016	Offense Disposition: Charge #1 RAPE, AGGRAVATED SERIOUS BODILY INJURY c265 §22(a) Date: 04/15/2016 Method: Jury Trial Code: Guilty Verdict		



<u>Docket</u> <u>Date</u>	<u>Docket Text</u>	<u>File</u> <u>Ref</u> <u>Nbr.</u>	<u>Image</u> <u>Avail.</u>
	Judge: Gaziano, Frank M  Charge #2 BURGLARY, UNARMED & ASSAULT c266 §14 Date: 04/15/2016 Method: Jury Trial Code: Guilty Verdict Judge: Gaziano, Frank M  Charge #3 B&E BUILDING NIGHTTIME FOR FELONY c266 §16 Date: 04/19/2016 Method: Jury Trial Code: Filed - Guilty Verdict Judge: Gaziano, Frank M		
04/19/2016	Event Result: The following event: Jury Trial scheduled for 04/19/2016 09:00 AM has been resulted as follows: Result: Held as Scheduled		
04/21/2016	Notice of appeal filed by defendant regarding conviction (Nunc Pro Tunc back to 4/21/16)	30.1	<a href="#">Image</a>
04/25/2016	Notice of appeal from sentence to MCI - Cedar Junction (at Walpole) filed by defendant Notice sent to Fabricant, C.J. - Gaziano, J. and the Appellate Division.	33	
05/13/2016	Commonwealth files sentence recommendation Sentencing transcript included	31	
06/20/2016	Pro Se Defendant 's Motion to be declared indigent with affidavit in support thereof and supplement. Filed (A Clerk's Notice was generated and sent to: Frank M Gaziano (P#32) with docket sheets)	32	
09/15/2016	Document:  Letter to the Appellate Division Sent On: 09/15/2016 10:51:05		
10/07/2016	General correspondence regarding Notice of Assignment of Counsel filed by ATTY Michael Nam-Krane		
10/18/2016	Attorney appearance On this date Michael Alexander Nam-Krane, Esq. added as Appointed - Indigent Defendant for Defendant William E Berry Appointment made for the purpose of Case in Chief by Judge Unassigned.		
10/18/2016	Michael Alexander Nam-Krane, Esq.'s Notice of Appearance filed	34	
10/18/2016	Defendant 's Motion for Transcripts filed	35	
10/19/2016	The following form was generated: A Clerk's Notice was generated and sent to: Other interested party: Christine M Roach		
10/21/2016	Endorsement on Motion for Transcripts, (#35.0): ALLOWED		
10/28/2016	Court Reporter Nancy King is hereby notified to prepare one copy of the transcript of the evidence of 04/11/2016 09:00 AM Jury Trial, 04/12/2016 09:00 AM Jury Trial, 04/13/2016 09:00 AM Jury Trial, 04/14/2016 09:00 AM Jury Trial, 04/15/2016 09:00 AM Jury Trial, 04/19/2016 09:00 AM Jury Trial Original Sent 10/28/16 2nd Notice Sent 2/24/17		
10/28/2016	OTS is hereby notified to provide the JAVS transcript of the proceedings of 01/12/2016 09:30 AM Evidentiary Hearing on Suppression.		
11/07/2016	CD of Transcript of 01/12/2016 09:30 AM Evidentiary Hearing on Suppression received from Elizabeth Hayes. 1		
12/14/2016	Appeal for review of sentence entered at the Appellate Division: Originating Court: Suffolk County Criminal Receiving Court: Suffolk County Criminal Case Number: 1684AD099-SU ;		
01/24/2017	CD of Transcript of 01/12/2016 09:00 AM Motion Hearing received from Elizabeth Hayes.		
03/17/2017	CD of Transcript of 04/11/2016 09:00 AM Jury Trial, 04/12/2016 09:00 AM Jury Trial, 04/13/2016 09:00 AM Jury Trial, 04/14/2016 09:00 AM Jury Trial, 04/15/2016 09:00 AM Jury Trial, 04/19/2016 09:00 AM Jury Trial received from Nancy King. 6		
03/20/2017	General correspondence regarding Requested CD copies of Transcripts Mailed out to Deft Atty		
05/10/2017	SENTENCE APPEAL WITHDRAWN FISHMAN, FORD & CHIN, JJ.  Appeal Withdrawn  Applies To: Berry, William E (Defendant)		
09/13/2018	Defendant 's Motion to correct clerical mistake filed (Copy W/ docket sheets sent to Roach, RAJ)	36	<a href="#">Image</a>
09/25/2018	Endorsement on-Motion to correct clerical mistake, (#36.0): Other action taken "Commonwealth to kindly respond within 14 days, by no later than October 12, 2018" (Copy endorsement to J. Zanini, ADA and M. Nam-Krane, Attorney)  Judge: Roach, Christine M		<a href="#">Image</a>

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
10/24/2018	Commonwealth's Response to the Defendant's Motion to Correct the Record (Roach, RAJ with copy and docket sheets)	37	<a href="#">Image</a>
11/14/2018	Endorsement on Response to the Defendant's Motion to Correct the Record, (#37.0): ALLOWED "Following review of the Commonwealth's response and there being no objection, Defendant's motion filed 9/25/18 (P#36) is hereby ALLOWED" - Roach, RAJ (Copy of endorsement sent to J. Smith, ADA and M. Nam-Krane, Atty)  Judge: Roach, Christine M		<a href="#">Image</a>
11/20/2018	Attorney appearance On this date Janis DiLoreto Smith, Esq. added as Attorney for the Commonwealth for Prosecutor Suffolk County District Attorney		
11/29/2018	Attorney appearance On this date John P Zanini, Esq. added as Attorney for the Commonwealth for Prosecutor Suffolk County District Attorney		
11/29/2018	Appeal: notice of assembly of record sent to Counsel Atty. M. Nam-Krane, ADA J. Zanini, and Clerk Joseph Stanton.		
11/29/2018	Appeal: Statement of the Case on Appeal (Cover Sheet).	38	
12/10/2018	Notice of Entry of appeal received from the Appeals Court "Case was entered in this Court on December 5, 2018."	39	<a href="#">Image</a>
10/22/2019	Defendant's Motion and Memorandum in Support of Expert Funds (filed) Copy of motion and docket sheets sent to Roach, RAJ	40	<a href="#">Image</a>
11/04/2019	Endorsement on Defendant's Motion and Memorandum in Support of Expert Funds, (#40.0): ALLOWED "Motion for expert funds is ALLOWED in the amount of \$5,000.00. No basis for travel expenses at this time" (Copy of endorsement to M. Nam-Krane, Attorney and C. Campbell, ADA)		<a href="#">Image</a>
11/04/2019	Attorney appearance On this date John P Zanini, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Suffolk County District Attorney		
11/04/2019	Attorney appearance On this date Amy Martin Zacharias, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Commonwealth		
11/04/2019	Attorney appearance On this date Elizabeth Riley, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Suffolk County District Attorney		
11/05/2019	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Janis DiLoreto Smith, Esq.		
11/07/2019	Notice of docket entry received from Appeals Court RE#11: Appellate proceedings STAYED to 12/04/2019. Status report due then regarding disposition of the motion for expert funds filed in the trial court on 10/2/19	41	<a href="#">Image</a>
04/22/2020	Defendant Michael Alexander Nam-Krane, Esq.'s Supplemental Motion for Expert Funds, with affidavit in support thereof (filed) Copy of motion with docket sheets sent to Roach, RAJ	42	<a href="#">Image</a>
04/28/2020	Endorsement on Supplemental Motion for funds for Expert, (#42.0): ALLOWED Motion for funds in the amount of \$1,995.16 ALLOWED for the reasons stated, Roach, J. 4/24/2020		<a href="#">Image</a>
04/29/2020	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Michael Alexander Nam-Krane, Esq.		
05/06/2020	Defendant's Motion for Funds for Second Expert (with Memorandum in Support)	43	
05/12/2020	Endorsement on Motion for funds for Second Expert With Memorandum in Support, (#43.0): ALLOWED as endorsed.  "Following review of the file, and the affidavit in support of the Motion, I have been able to understand that the role of the prior expert, Dr. Waldman, is to consult on the role of alcohol, while the purpose of Dr. Strange is to consult on the subject of "false memory." Accordingly, while in no manner adopting the arguments on the merits contained in this Motion, funds not to exceed \$3500.00 are ALLOWED for this purpose, at CPCS rates and procedures."  Christine M. Roach 5/12/2020		<a href="#">Image</a>
05/12/2020	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Michael Alexander Nam-Krane, Esq.		
10/06/2020	Notice of docket entry received from Appeals Court RE#19: Appellate proceedings STAYED to 11/06/2020. The defendant is granted leave to file, and the trial court leave to consider, a motion for new trial. A status report is due 11/06/2020 regarding trial counsel's affidavit and appellate counsel's progress in drafting and filing the new trial motion	44	<a href="#">Image</a>
03/18/2021	Notice of docket entry received from Appeals Court RE#24: Appellate proceedings are stayed to 04/20/2021. A status report is due then regarding disposition of the new trial motion for new trial, recently filed in the trial court. On 04/10/2019, the trial court was granted leave to consider the motion upon its filing.	45	<a href="#">Image</a>
03/18/2021	Defendant's Motion for new trial with affidavit of appellate counsel in support of motion for new trial, filed. (Notified Ullmann, RAJ with copy and dockets)	46	<a href="#">Image</a>

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/18/2021	William E Berry's Memorandum in support of Motion for New Trial Introduction, along with the Motion for new Trial Appendix filed with Motion for new Trial Impounded appendix (Grand Jury Minutes and Medical records PROVISIONALLY SEALED) (Notified Ullmann, RAJ with copy and dockets)	47	<a href="#">Image</a>
03/25/2021	Endorsement on Defendant 's Motion for reconsideration with affidavit of appellate counsel in support of motion for new trial, (#46.0): Other action taken "Commonwealth to respond by 5/25/21" Copy to M. Nam-Krane, Attorney and C. Campbell, ADA		<a href="#">Image</a>
03/29/2021	Attorney appearance On this date Caillin Campbell, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth		
03/29/2021	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Michael Alexander Nam-Krane, Esq. Prosecutor, Attorney: Caillin Campbell, Esq.		
04/06/2021	Attorney appearance On this date Monica J DeLateur, Esq. added for Prosecutor Commonwealth		
04/06/2021	Monica J DeLateur, Esq.'s Notice of Appearance. Filed	48	<a href="#">Image</a>
04/20/2021	Notice of docket entry received from Appeals Court RE#25: Appellate proceedings are stayed to 05/28/2021. A status report is due then regarding whether the Commonwealth filed its response (due on or before 05/25/2021) and disposition of the new trial motion for new trial.	49	<a href="#">Image</a>
05/24/2021	Commonwealth 's Motion to enlarge the time for filing it's opposition to the defendant's motion for a new trial (first) filed (Copy, notice and docket sheets sent to Ullmann, RAJ)	50	<a href="#">Image</a>
06/01/2021	Endorsement on Motion to enlarge the time for filing it's opposition to the defendant's motion for new trial (first), (#50.0): ALLOWED "6/1/2021-Allowed. No further extensions absent strong showing of good cause." Ullmann, RAJ (Copy and notice sent to M. DeLateur ADA, M. Nam-Krane Atty)		<a href="#">Image</a>
06/01/2021	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Michael Alexander Nam-Krane, Esq. Attorney PO BOX 301218, Jamaica Plain, MA 02130 Prosecutor, Attorney: Monica J DeLateur, Esq. Suffolk County District Attorney's Office One Bulfinch Place, Boston, MA 02114		
06/02/2021	Notice of docket entry received from Appeals Court RE#26: Appellate proceedings are further stayed to 07/13/2021. A status report is due then as to whether the Commonwealth filed its opposition to the new trial motion by 07/06/2021 as anticipated and the disposition of the motion.	51	<a href="#">Image</a>
07/06/2021	Commonwealth 's Motion (Second) to Enlarge the Time for Filing it's Opposition to the Defendant Motion for a New Trial. Filed	52	<a href="#">Image</a>
07/12/2021	Endorsement on Motion (second) to enlarge the time for filing its opposition to the defendants motion for new trial, (#52.0): ALLOWED based on showing of good cause, not further extensions.  (copy of docket sheets, Notice, original motion sent to C.Campbell ADA, M.. Delateur ADA and M. Nam- Krane ATTY)		
07/12/2021	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Michael Alexander Nam-Krane, Esq. Attorney PO BOX 301218, Jamaica Plain, MA 02130 Defendant, Attorney: Elliot R Levine, Esq. Law Office of Elliot Levine 20 Whitney Rd, Quincy, MA 02169 Prosecutor, Attorney: Caillin Campbell, Esq. Suffolk County District Attorney's Office 1 Bulfinch Place Third Floor, Boston, MA 02114 Prosecutor, Attorney: Monica J DeLateur, Esq. Suffolk County District Attorney's Office One Bulfinch Place, Boston, MA 02114 Holding Institution: Suffolk County Jail 200 Nashua Street, Boston, MA 02114 Prosecutor, Attorney: Janis DiLoreto Smith, Esq. Boston Water and Sewer Commission 980 Harrison Ave, Boston, MA 02119		
07/12/2021	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Michael Alexander Nam-Krane, Esq. Attorney PO BOX 301218, Jamaica Plain, MA 02130 Prosecutor, Attorney: Monica J DeLateur, Esq. Suffolk County District Attorney's Office One Bulfinch Place, Boston, MA 02114		
07/12/2021	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Michael Alexander Nam-Krane, Esq. Attorney PO BOX 301218, Jamaica Plain, MA 02130 Prosecutor, Attorney: Caillin Campbell, Esq. Suffolk County District Attorney's Office 1 Bulfinch Place Third Floor, Boston, MA 02114 Prosecutor, Attorney: Monica J DeLateur, Esq. Suffolk County District Attorney's Office One Bulfinch Place, Boston, MA 02114		
07/21/2021	Opposition to paper #46.0 Motion For New Trial, with Exhibits filed by Commonwealth (Copy of Opposition along with Clerk's notice, copy of the Motion for a New Trial, and docket sheet sent to Ullmann, J.)	53	<a href="#">Image</a>
07/21/2021	Notice of docket entry received from Appeals Court RE#27: Appellate proceedings are further stayed to 08/13/2021. A status report is due then as to whether the Commonwealth filed its opposition to the new trial motion by 07/20/2021 as anticipated and the disposition of the motion.	54	<a href="#">Image</a>

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/23/2021	Endorsement on Motion for new trial, (#46.0): Other action taken "Case assigned to Hon. Christine M. Roach." Ullmann, RAJ		<a href="#">Image</a>
07/23/2021	Docket Note: Case assigned to Judge Roach per Ullmann, RAJ		
08/03/2021	Defendant 's Supplemental Motion for new trial Request for Evidentiary Hearing with affidavit, filed. (copy of motion, docket sheets and notice sent to Roach, J.)	55	<a href="#">Image</a>
08/13/2021	Notice of docket entry received from Appeals Court RE#28: Appellate proceedings are further stayed to 09/13/2021. A status report is due then as to the Disposition of the Motion for new trial, Notice/Attest	55.1	<a href="#">Image</a>
08/20/2021	Defendant 's Motion to Amend Defendant's Memorandum in Support of Motion for New Trial with Affidavit. Filed (Copy of the Motion and Docket Sheets sent to Roach, J)	56	<a href="#">Image</a>
08/20/2021	Defendant 's Submission of Amended Argument IV of the Defendant's Memorandum in Support of Motion for New Trial. Filed (Copy the Motion and Docket Sheets sent to Roach, J )	57	<a href="#">Image</a>
09/13/2021	Notice of docket entry received from Appeals Court RE#29: Appellate proceedings are further stayed to 11/15/2021. A status report is due then as to disposition of the motion for new trial.	58	<a href="#">Image</a>
09/23/2021	Defendant 's Motion and memorandum in support of funds for retaining Dr. Alan A. Wartenberg with affidavit , MD filed (copy, notice and docket sheets sent to C. Roach J.)	59	
09/27/2021	Endorsement on Motion to Amend defendant's memorandum in support of motion for a new trial., (#56.0): ALLOWED Motion to Amend allowed, should the commonwealth seek to amend its opposition it should do so by October 29 2021. Should the Commonwealth not seek a further filing, it shall so state by no later than that same date. (Notice and copy sent to ADA C.Campbell and Atty M.Nam-Krane)		<a href="#">Image</a>
09/28/2021	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Michael Alexander Nam-Krane, Esq. Attorney PO BOX 301218, Jamaica Plain, MA 02130 Prosecutor, Attorney: Cailin Campbell, Esq. Suffolk County District Attorney's Office 1 Bulfinch Place Third Floor, Boston, MA 02114		
10/04/2021	Endorsement on Motion and memorandum in support of funds for retaining Dr. Alan A. Wartenberg with affidavit, (#59.0): ALLOWED Following review, Motion for Funds for Substitute Expert ALLOWED in the amount of \$6,000.00 for the Reasons Stated at CPCS rate and procedures, without prejudice to the Arguments on the merits which shall await completion of the filing of any additional pleading by the Commonwealth and then taking the Motions Under Advisement by the Court (Notice Sent with Copy of Endorsement to ADA C.Campbell and Atty M.Nam-Krane)		<a href="#">Image</a>
11/01/2021	Commonwealth 's Response to Court Order regarding Commonwealth amending its opposition filed. (Roach J. Notified with copy) - D.Sheehan, ACM	60	<a href="#">Image</a>
12/06/2021	Affidavit of Appellate Counsel Atty Michael A. Nam-Krane in re: Replacement Expert filed (Roach J. notified with copy) - D.Sheehan, ACM	61	
12/06/2021	Endorsement on Appellate Counsel Atty Michael A. Nam-Krane in re: Replacement Expert, (#61.0): Other action taken "All filings by the Defense in this matter shall be due no later than February 28, 2022. Further extensions. The Commonwealth shall have no longer than 30 days until March 31, 2022 to Supplement its opposition if necessary" - Roach J. (Attorney Michael Nam-Krane and ADA M.DeLateur each notified with copy via electronic mail) - D.Sheehan, ACM		<a href="#">Image</a>
02/28/2022	Defendant 's Motion to file an amended memorandum in support of defendant's motion for new trial with affidavit filed (notice, copy and docket sent to Roach, J.)	62	<a href="#">Image</a>
02/28/2022	William E Berry's Memorandum in support of motion for new trial (amended) filed.	63	<a href="#">Image</a>
03/07/2022	Endorsement on Motion To File an Amended Memorandum in Support of Defendant's Motion For New Trial, (#62.0): ALLOWED Motion to File Amended Memorandum ALLOWED. Motion to Strike Previously filed Memorandum is DENIED.  (Atty Levine, Atty Nam-Kam, DA Smith and ADA Campbell , ADA DeLateur have been notified by mail)		<a href="#">Image</a>
04/01/2022	Commonwealth 's Motion to enlarge the time for filing its supplemental opposition to the defendant's motion for a new trial filed (Copy, notice and docket sheets sent to Roach, J)	64	<a href="#">Image</a>
04/07/2022	Commonwealth 's Supplemental Opposition to the Defendant's Motion for a New Trial with exhibits, filed Notice, copy and docket sent to Roach, J.	65	<a href="#">Image</a>
04/08/2022	Endorsement on Motion to enlarge the time for filing its supplemental opposition to the defendant's motion for a new trial, (#64.0): ALLOWED "Motion is allowed for the reasons stated." Roach, J (Copy and notice sent to M. DeLateur ADA and M. Nam-Krane Atty)		<a href="#">Image</a>
04/08/2022	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Michael Alexander Nam-Krane, Esq. Attorney PO BOX 301218, Jamaica Plain, MA 02130 Prosecutor, Attorney: Monica J DeLateur, Esq. Suffolk County District Attorney's Office One Bulfinch Place, Boston, MA 02114		
04/13/2022	Docket Note: - Post-conviction matter assigned to Judge Ham per Ullmann, RAJ		
04/21/2022	Notice of docket entry received from Appeals Court RE#33: Appellate proceedings are further stayed to 5/23/2022. A status report is due then regarding disposition of the	66	<a href="#">Image</a>

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	motion for new trial.		
05/03/2022	Defendant 's Reply to Commonwealth's supplemental opposition to the defendant's motion for a new trial with affidavit and supporting documents filed (Copy, notice and docket sheets sent to Ham, J)	67	<a href="#">Image</a>
05/25/2022	Notice of docket entry received from Appeals Court RE#34: Appellate proceedings are further stayed to 06/27/2022. A status report is due then regarding disposition of the motion for new trial.	68	<a href="#">Image</a>
06/28/2022	Notice of docket entry received from Appeals Court RE#35: Appellate proceedings STAYED to 07/28/2022. A status report is due then regarding disposition of the motion for new trial.	69	<a href="#">Image</a>
08/04/2022	Habeas Corpus for defendant issued to Massachusetts Treatment Center - Bridgewater returnable for 08/10/2022 10:00 AM Hearing on Motion for New Trial.	70	<a href="#">Image</a>
08/10/2022	Event Result:: Hearing on Motion for New Trial scheduled on: 08/10/2022 10:00 AM Has been: Held Under Advisement  Custody Defendant brought into court.  After oral argument on the Defendant's Motion for New Trial, the motion is taken under advisement.  Defendant's supplemental brief to be filed by 9/7/22.  Commonwealth's response to be filed by 9/14/22.  Hon. Catherine Ham, Presiding - M.DeLateur, ADA - M.Nam-Krane, Esq. - FTR 10:02am Staff: Abigail Bryan, Assistant Clerk Magistrate		
09/01/2022	Notice of docket entry received from Appeals Court RE#37: Appellate proceedings stayed to 10/03/2022. A status report is due then regarding disposition of the motion for new trial following the parties' submission of additional memoranda.	71	<a href="#">Image</a>
09/08/2022	Defendant 's Post August 10th Hearing Memorandum	72	<a href="#">Image</a>
09/14/2022	Commonwealth 's Response to the Defendant's Post-Hearing Memorandum	73	<a href="#">Image</a>
09/19/2022	Defendant 's Reply To Commonwealth's Response to the Defendant's Post August 10th Hearing Memorandum	74	<a href="#">Image</a>
10/04/2022	Notice of docket entry received from Appeals Court RE#38: Appellate proceedings STAYED to 11/04/2022. A status report is due then regarding disposition of the motion for new trial following the parties' submission of additional memoranda.	74.1	<a href="#">Image</a>
10/05/2022	MEMORANDUM & ORDER:  Denying Motion for New Trial  Judge: Ham, Hon. Catherine  MEMORANDUM & ORDER: Denying Motion for New Trial sent to the parties via electronic mail.	75	<a href="#">Image</a>
10/11/2022	Notice of appeal filed by defendant regarding denial of motion for new trial.	76	<a href="#">Image</a>
11/04/2022	Notice of docket entry received from Appeals Court RE#39: Appellate proceedings STAYED to 12/06/2022. A status report is due then or within 7 days of assembly of the record and entry of the related appeal. Upon entry of the related appeal, a motion to consolidate the appeals is to be filed on both Appeals Court dockets.	77	<a href="#">Image</a>
11/29/2022	CD of Transcript of 08/10/2022 10:00 AM Hearing on Motion for New Trial received from Eileen Dhondt.		
12/06/2022	Appeal: Statement of the Case on Appeal (Cover Sheet).	78	<a href="#">Image</a>
12/06/2022	Notice to J. Stanton, Clerk of the Appeals Court of Assembly of Record		<a href="#">Image</a>
12/06/2022	Notice of assembly of record sent to Counsel		<a href="#">Image</a>
12/07/2022	Appeal entered in Appeals Court on 12/07/2022 docket number 2022-P-1177	79	<a href="#">Image</a>
12/09/2022	Notice of docket entry received from Appeals Court RE #41 & #42: Allowed. The appeals in 18-P-1627 and 22-P-1177 are consolidated. The appeal in 18-P-1627 is closed. All future filings shall relate to 22-P-1177 only. Appellant's brief and record appendix are due on or before 02/06/2023. Notice/attest	80	<a href="#">Image</a>
12/09/2022	Notice of docket entry received from Appeals Court RE#4: The appeals in 18-P-1627 and 22-P-1177 are consolidated. The appeal in 18-P-1627 is closed. All future filings shall relate to 22-P-1177 only. Appellant's brief and record appendix are due on or before 02/06/2023. Notice/attest	81	<a href="#">Image</a>

**Case Disposition**DispositionDateCase Judge

Disposed by Jury Verdict

03/17/2015

## EXPERT'S REPORT

Deryn Strange, Ph.D.

I was retained to serve as an expert in the case of *Commonwealth of Massachusetts v William Berry*. I was asked by Michael Nam-Krane to review the case materials in order to assess any memory factors that were present in the case and to offer opinions regarding the relevance of scientific research in the area of human memory to the facts of the case itself.

My qualifications are as follows:

I am a Professor of Psychology at John Jay College of Criminal Justice, where I teach courses at the undergraduate and graduate levels and conduct research in the field of memory and psychology and the law. Prior to my academic appointments, I received extensive training (in both teaching and research) in the study of human memory as applied to the legal system, at Victoria University of Wellington (New Zealand), where I completed both my PhD and undergraduate degrees and at the University of Otago (New Zealand) where I completed my postdoctoral training. Specifically, I received my PhD in 2005, my BSc (Hons) in Psychology in 2001, and BA in Psychology and Education in 2000. I have published scientific papers concerning the topic of human memory in peer-reviewed psychology journals. I have also served as an ad hoc reviewer for prestigious psychology journals. In addition, I am a Fellow of the Association for Psychological Science and I am the President of the Society for Applied Research in Memory and Cognition; both are international societies. I routinely present the results of my research at scientific conferences both nationally and internationally, and I am a member of several professional scientific organizations including the *Association for Psychological Science*, the *Society for Applied Research in Memory and Cognition*, *Psychonomic Society*, *American Psychology-Law Society* and *Women in Cognitive Science*. Thus, I have access to the latest research in my field. My curriculum vita is attached.

I was provided with the following Discovery:

- Alice's (a pseudonym) medical records
- Grand jury of Alice and friend
- Grand jury of Detective Barrett
- Grand jury of the roommate
- Memo of testimony MA v Berry
- Trial transcript

In the Sections below I discuss the general principles of memory works and highlight research findings relating to the factors that may come into play in this case for each of the complaining witnesses—in doing so I am not commenting on the credibility of any individual nor expressing an opinion about the reliability of any evidence in this case—rather, the research findings provide background information that would be useful to a jury when it makes its assessments of evidence and credibility. The science I rely upon has been generally accepted in the scientific community for many decades (see, e.g., Kassin, Ellsworth, & Smith, 1989; Kassin, Tubbs, Hosch, & Memon, 2001; Schmechel, O'Toole, Easterly & Loftus, 2006). Indeed, the data supporting my opinion has

been gathered over the past century primarily using controlled laboratory research as a means of identifying basic scientific principles. Much of this research has been funded by research grants from national agencies, including the National Science Foundation, the National Institutes of Health, along with military research arms such as the Air Force and Naval offices of scientific research and the Defense Advanced Research Projects Agency.

### **I: General Overview of How Memory Works**

Despite its intuitive appeal as a metaphor—and the beliefs of the lay public (Simons & Chabris, 2011)—memory does not function like a digital video recorder, no matter what the circumstances. Simply put, we do not remember everything that ever happened to us, we are unable to pinpoint a particular point in time and play that moment back unedited. Instead, retrieving a memory is a *reconstructive* process of putting together traces, which can involve components of the original experience, but also assumptions and new information we learned after the event that fill the gaps in our memory (see for reviews, Lindsay & Read, 1994; Loftus & Bernstein, 2005; Schacter, 2001).

The simplest model of how memory works describes a three-stage process: encoding, storage and retrieval. There are factors at each stage that can affect the reported memory. First is *encoding*: for something to be remembered later, it must be entered into our memory system. That means that we have to pay attention to it (Chabris & Simons, 2010). Unfortunately, even in the very best of circumstances we have limited attentional capacity and thus cannot focus on all environmental stimuli at once. Therefore, we make choices about where to focus our attention. Those choices are governed by the situational demands. Because the demands of an experience are different for each person—ranging, for example, from a person’s viewing perspective to their goals and prior experience—people’s accounts of an event can differ in both small and large ways (Echterhoff, Hirst, & Hussy, 2005; Gabbert, Memon & Allan, 2003; Gabbert, Memon, & Wright, 2006).

Second, is *storage*: the act of retaining information in memory for a period of time. During this phase, every time the memory is activated in some way—such as, reading an article about the event, discussing it with therapists, investigators or family members—it will be slightly altered. That is, we can begin to incorporate other details into our memory that we did not see or experience but that other people reported for the purpose of filling in the gaps in our knowledge of the event or trying to make sense of what occurred (Loftus, 1996, Strange & Takarangi, 2012, 2015), or justifying our emotional reactions to the event (Southwick et al., 1997). This filling in explains how memory errors occur and the mechanism that explains these memory errors is called a source monitoring error (Johnson, Hashtroudi & Lindsay, 1993; Lindsay, 2008).

Third, is *retrieval*: reporting on the event. Retrieval will be effected by the kinds of questions we are asked, the goals of the conversation and our emotions. Thus some details—those that we encoded well for example—will be reinforced on each retelling of the event and will, therefore, be better remembered over time, while other details will be forgotten.

To summarize then, normal human memory is a reconstructive process. Memory errors are not *inevitable*. Memories can be mistaken in whole or in part. Importantly, if details are not encoded they cannot be accurately recalled later and what details we do encode are subject to distortion.



## II: General Memory Principles

The literature detailed above makes a strong case that memory is typically malleable and prone to error. It is important to note that there are additional general memory principles that should be considered.

**Source Monitoring.** Source monitoring describes the processes by which we decide where we learned a particular piece of information, such as whether something really happened or whether we only imagined it (Lindsay, 2008). Put simply, we don't store memories with tags or labels specifying where the knowledge of each individual piece of that memory came from. As a result, information from a particular event can be combined with information we learned later and we cannot tell the difference. Since we tend to rely on heuristics—such as how familiar an event feels or how easily it comes to mind, factors that can easily be manipulated via repeated imagining or discussion or when our memories have been affected by substances we have consumed—to determine whether an event really occurred, we can make mistakes.

**Confirmation Bias.** Confirmation bias is a type of selective thinking. Once a hypothesis has been formed, our inclination is to confirm rather than refute it. We tend to look for supporting information, interpret ambiguous information as consistent with our beliefs, and minimize any inconsistent evidence. Types of confirmation bias include: (1) the biased search for evidence; (2) the biased interpretation of information; and (3) a biased memory (selective recall; Rossmo & Pollock, 2019, p. 814). Rossmo and Pollock's (2019) root cause analysis of wrongful convictions found confirmation bias was the single most frequent problem. Indeed, they observed confirmation bias in 74% of their cases overall, and 80% of the known wrongful convictions in their sample.

Confirmation bias can cause all manner of errors and biases to creep into an investigation and at all levels. Essentially, evidence that supports the investigative theory is taken at face value and only contradicting evidence is given the skeptical scrutiny an unbiased investigation requires. For example, child interviewers sometimes ask questions of other people in a way that may reflect their existing belief(s) about what might have happened (e.g., Brainerd & Reyna, 2005; Haverkamp, 1993; Jackson & Nuttall, 1993). Which can lead to biased interviewing procedures, which can in turn lead to an interviewee developing a false memory for their past (Ceci, Kulkofsky, Klemfuss, Sweeney, & Bruck, 2007; Hirt, Lynn, Payne, Krackow & McCrea, 1999).

There are a number of examples of confirmation bias evident in the record:

1. In the 1/21/15 Grand Jury testimony page 11, Alice describes her conversation with Caitlyn after waking up, "Confirmed with her that I had not brought anyone home with me the night before and she confirmed yes, that I had not, that we were alone when we came home . From Caitlyn's Grand Jury Testimony (pg 23) She was like, yes, I did. He was just in my room, like there was somebody in bed with me. And I said, you didn't come home with anyone. I put you to bed. I put you to bed alone. And then she kind of she almost -- it almost looked like there was a shift in her mind and then she became a bit more visibly like tearful upset. For Caitlyn, the tears are confirmation that Alice has realized she was raped. For Alice, Caitlyn's words are clearly telling her that what she thought is wrong.

2. Additionally, the exchange (2-97 and 98) where Alice is convinced Mr Berry called her

Caitlyn rather than saying, “Okay then.”

3. The SANE nurse who notes that Alice was crying during her examination. Her notes do not reveal that she asked why she was crying, she obviously presumed it was due to a sexual assault; indeed, she does not note that the minor injuries she recorded could be due to a consensual sexual encounter 3. Alice’s mother agreeing with these conclusions is of course, understandable but also reinforces a potentially erroneous conclusion. Indeed, the confidence these people exhibited regarding what happened would be enough to help create a memory in Alice (as described below).

#### **IV: Memory Distortion and False Memories**

A substantial body of literature illustrates that information we absorb from others—via conversations, media reports, film and television, etc—can influence what we later recall about an event. Indeed, researchers have used a particular methodology termed “the misinformation effect” for over thirty years to demonstrate the kinds of details that can be absorbed into our memories and how that can happen (Barnier, Sutton, Harris & Wilson, 2008; French, Garry & Mori, 2008; Gabbert, Memon & Allan, 2003; Loftus, 1996). It is important to note that people can falsely remember minor details (the color of a car, a perpetrator’s appearance), and they can also come to remember entirely false events. These results fit with the body of real-world examples where people now recognize they had come to remember entirely false experiences, often involving horrific acts of victimization (see Strange, Clifasefi & Garry, 2007 for a review). Indeed, a recent “mega-analysis” of this body of research reveals that 30% of the psychologically healthy adults who participated in the studies came to develop a false memory for the suggested event (Scoboria, Wade, Lindsay, Azad, Strange, Ost & Hyman, 2017).

***The steps involved in developing a distorted or false memory:*** We now know that after a false event has been suggested (explicitly or implicitly; here, explicitly by Alice’s classmate, Caitlyn) four processes must occur. First, people must come to believe the event was plausible and second, they must also develop an autobiographical belief that it actually occurred. Both of these processes—plausibility and autobiographical belief—are relatively easy to manipulate and encourage in people and they can happen in either order (Scoboria, Jackson, Talarico, Hanczakowski, Wysman & Mazzoni, 2014; Scoboria, Mazzoni, Jarry & Shapero, 2012; Scoboria, Wysman & Otgaar, 2012). Indeed, even highly implausible events and statements can be come plausible with enough repetition (Fazio, Rand & Pennycook, 2019; Strange et al. 2006). Third, people must construct a detailed memory of the event—that is, do some “memory work” to construct the memory and elaborate on the suggestion—critically, much of the detail to flesh out these memories could be true, pulled from other true memories of the time period (e.g., places that are familiar, people that are familiar). Fourth, and finally, people must commit a source monitoring error, as described above (Lindsay, 2008). Committing that error, claiming the false memory as true, is the final step in memory construction.

**Retelling/Discussion.** People often reflect upon their previous experiences, recalling what they saw or heard, to themselves or others, under many different circumstances. For example, witnesses are often asked to repeat the same details about their memory for a crime. These retellings of an event can result in a rich and fluent narrative that implies, but does not necessarily reflect, the memory’s veracity. Importantly, when we choose to retell or recall a memory, this process is selective: memory tends to become better for details that are selectively and repeatedly recalled, but worse for details that are not, a

phenomenon called *retrieval-induced forgetting* (Anderson, Bjork, & Bjork, 1994; Barnier, Hung, & Conway, 2004; Levy & Anderson, 2002). Although retelling an event does not necessarily lead to new, supplementary details being added—although it could, for example, if the retelling was part of a discussion—it can nevertheless change what details of an experience are remembered and what details are forgotten. Importantly when new details are revealed over time about an abuse allegation it can mean that the person is doing additional memory work reducing the accuracy of the reported details. I note here that Alice’s description of what happened when she woke up did change over time: according to the record she told Caitlyn and her SANE nurse that she woke up to find Mr Berry on top of her; however, her testimony to the grand jury states that Mr Berry was having sex with her from behind (“doggy style”). She also changed cuddling 2-174 to “spooning” 2-92-93 and added that Mr Berry “did not stop immediately” 2-74. Additionally, in 2-118-119 Alice denies that she told Caitlin, “maybe he knocked on the window and I let him in the door.” By contrast, Caitlyn agrees that Alice told her that on 2-166.

**Expectancy and motivation.** We know that when someone expects a particular outcome, that expectation makes the outcome more likely to occur (Kirsch, 1999). For example, thinking that you are going to experience persistent pain makes you more likely to experience pain (Boersma & Linton, 2006); believing that you are taking a pill that will help you feel happier makes you feel less depressed (Kirsch & Sapirstein, 1998). Expectancies can develop in a number of ways, one of which is in response to deliberate or not deliberate suggestion (Stewart-Williams & Podd, 2004). The widely documented “placebo effect”—which occurs when an inert substance produces genuine physiological or psychological changes—is one example of an expectancy effect derived from deliberate suggestion (Kirsch, 1997; Stewart-Williams & Podd, 2004).

Interestingly, expectation appears to be a key feature of a person’s metacognitive toolkit, particularly when it comes to dealing with negative experiences, such as dissatisfaction, pain, fear; and psychological disorders such as depression, and anxiety. A growing body of research demonstrates the powerful influence of expectation on self-reported subjective experiences, actual behaviour and physiological responses in a variety of clinically relevant domains (Kirsch, 1997). In short, when people expect a particular outcome, they automatically set in motion a chain of cognitions and behaviours to produce that outcome (Kirsch, 1997, 2004). But these expectancies have a powerful effect on memory as well. That is, people’s memory for the past is influenced by what they expect to have happened based on what they know now, what they have experienced previously, and how they believe memory works (Hirt, Lynn, Payne, Krackow, & McCrea, 1999; Lindsay & Read, 1994; Loftus, 1996). Thus information we acquire over time can change how we interpret earlier events; a benign interaction can be reinterpreted as something criminal. Here for example, In the 1/21/15 Grand Jury testimony page 8, Alice states. “So the first time that I was awoken, I was very disoriented and I remember pushing him off of me but not really putting together things right away.” Her first thought is not that a crime has taken place.

**Detail as a Proxy for Memory Accuracy.** It may seem intuitive, and thus people may believe, that witnesses who provide more specific details about a particular event—such as

verbatim utterances, clothes people were wearing, how long an event lasted, what the weather was like—are more likely to be accurate (Bell & Loftus, 1988). However, this is not necessarily the case. Research comparing memories for true vs. false or imagined events has sometimes identified features that appear to distinguish true from false memories; e.g., perceptual detail (Marche et al., 2010), emotional and action information (Qin et al., 2008), visual clarity and contextual detail (Suengas & Johnson, 1988). And yet other studies have found true and false memories to be similar on features such as confidence, feelings of reliving, clarity, and emotional content (Hyman & Pentland, 1996; Lindsay et al., 2004; Ost et al., 2002). Indeed, people can be equally as confident in their true memories as their false memories, and tend to describe both true and false memories with detail and emotion. In short, when faced with a particular memory for an event, it is almost impossible to determine whether that memory is true or false (Laney & Loftus, 2008). Indeed, even fMRI scanning is unable to detect differences between true and false memories (Yu, Tao, Zhang, Chan & Lee, 2019)

I would add that, as evidenced by the large number of internalized false confession cases—where individuals have come to believe they committed heinous crimes only to have those convictions overturned when DNA revealed they were not the perpetrators—jurors are also unable to reliably distinguish between a true and false memory (Kassin, Meissner, & Norwick, 2005; Kassin & Gudjonsson, 2005; Kassin & Gudjonsson, 2004).

**Confidence Malleability.** Confidence malleability typically refers to the tendency for an eyewitness to become more (or less) confident in his or her identification as a function of events that occur after the identification, but it applies broadly to memory. For example, when an eyewitness is told they identified the suspect, or that the case is going to trial, they become more confident in their identification. They also claim to have got a better look at the suspect than they did and their memory for how good the viewing conditions were can change (Leippe, 1980; Wells, Ferguson, & Lindsay, 1981; Luus & Wells, 1994; Wells & Bradfield, 1998). Researchers have also discovered that witnesses who are questioned repeatedly grow more confident about the accuracy of details in their reports (see also Shaw, 1996; Shaw & McClure, 1996; Turtle & Yuille, 1994). Briefly then, confidence is easily manipulated and that manipulation also affects people's memory. Alice said, "I think in the first moments to minutes I was confused, and didn't really know what had happened. And so I went to my friend, Caitlin Chiupka, and told her." (April 13/121). This is a clear admission that she was unclear about the events of the evening and accepted what she was told by her friend. Indeed, she told her friend that she "bought someone home last night" and initially insisted she did again after being told "no you didn't" (Vol II, 144-145). As a result, later we see her trying to work out alternative explanations, "maybe somebody knocked on the window and she let him in the door." (April 13/166) This shows her uncertainty. She also then states, "It would be very shocking to me if I got up and let anyone in the door." (April 13/119) As if she might be trying to convince herself that the prevailing theory of the night is correct. However by 2-118-119 she answers "absolutely not," and "no" when asked if she thought that maybe Mr Berry knocked on the window and she let him in.

Additionally, 2- 97-98, we see Alice exhibiting more confidence that Mr Berry called her Caitlyn, however, throughout the grand jury testimony she hedged, e.g., "I think," "maybe,"

and "to my knowledge," or "I don't believe • • • ".

**Alcohol.** Although I am not an expert in alcohol, my read of the literature suggests it is highly plausible that Alice experienced an alcohol blackout. Importantly, alcohol's effect on memory begins long before a blackout becomes a likely outcome. For example, in the eyewitness identification literature, we see that alcohol is likely to diminish identification performance. Recently, Van Oorsouw, Merckelbach and Smeets (2015) approached participants in bars and invited them to commit a mock crime. Immediately afterwards, their memory and susceptibility to suggestive questions were tested, and they were also then re-tested during a sober follow-up 3–5 days later. They found that, compared with sober participants, moderate and severe intoxication was associated with lower levels of correctly recalled crime details during both test sessions (i.e. intoxicated and sober). Also, during both sessions, severely intoxicated participants displayed a greater tendency to go along with suggestive cues compared with sober participants. Thus, intoxication impaired memory and increased suggestibility during an immediate interview, and both effects persisted when sober again. Finally, in a survey of people who had experienced an alcohol blackout—designed to determine how they begin to reconstruct what happened to them during the blackout—Nash & Takarangi (2011) note, “the data show that people's desire to "fill in the blanks" can lead them to rely on rather unreliable sources, and may also encourage them to adopt weaker source-monitoring criteria. Indeed, in at least some cases reconstructing blackouts appears to lead to the development of false beliefs or memories.”

***Potential Sources of Suggestive Influence:*** In addition to the basic principles of memory listed above, there are a variety of specific suggestive influences that play a role in the creation of a false memory.

Research has shown that a wide variety of therapeutic and/or interviewing techniques can affect the level and accuracy of the detail that people report, and aid the creation of false memories (e.g., Bruck & Ceci, 1999; La Rooy, Malloy & Lamb, 2011; Loftus, 1993; Loftus & Ketcham, 1994; Otgaar, Candel, Smeets & Merckelbach, 2010; Sutherland & Hayne, 2001; Zajac & Hayne, 2006). It is unclear from the record whether Alice engaged in any of these tactics.

**Guided imagery/visualization.** The act of imagining a false childhood event can increase a person's confidence that they actually experienced that event (Sharman & Scoboria, 2008). Thus, if Alice ever imagined how a rape could have unfolded (regardless of whether that was true), it is possible that she became confident that it actually happened (Strange et al., 2002).

**Journaling/Writing.** Autobiographical writing—such as writing essays, letters, emails or affidavits detailing abuse allegations—can function as an act of imagination, building a coherent narrative. Imagination is critical to the development of false, and distorted, memories (Scoboria, Wade, Lindsay, Azad, Strange, Ost, & Hyman, 2017; Sharman & Scoboria, 2008). For example, research has demonstrated that writing about how a false childhood event might have happened can increase a person's confidence that they actually experienced that event (Sharman, Garry & Beuke, 2004). Moreover, research shows that writing down a belief and sharing that writing with others can enhance commitment to the belief (Cialdini, 1984; Spanos, 1996). Hence, autobiographical

writing has the potential to be risky, at least to memorial accuracy, when a person is encouraged to write in a manner that does not involve evaluating the accuracy of the content, and when the content is shared with others.

**Dreams.** Reality monitoring, an example of source monitoring, is people's ability to discriminate memories based on actual events from memories that arise from internally generated material (such as imagined experiences, delusions or dreams). As mentioned above, content relating to an actual experience is typically richer in sensory, perceptual and contextual detail, while material that has been imagined may retain markers of effortful cognitive operations (Johnson & Raye, 1981; Mitchell & Johnson, 2000). However, because memories of dreams are often perceptually vivid, and typically do not include information about cognitive operations, it may be especially difficult to discriminate content generated in dreams, from real experience (Johnson, Kahan & Raye, 1984). In some cases, other cues, such as whether the experience is possible or plausible, may help people to determine whether an event really occurred (Scoboria, Mazzoni, Kirsch & Relyea, 2004). However, research shows that both adults and children can develop false beliefs and memories for events that are implausible or impossible (Braun, Ellis & Loftus, 2002; Mazzoni & Memon, 2003; Strange, Sutherland & Garry, 2006). Further research suggests that in some cases, content from dreams may be confused with actual experiences (e.g., Mazzoni & Loftus, 1996). Indeed, both healthy adults (Rassin Merckelbach & Spaan, 2001) and patients suffering from the sleep disorder narcolepsy (Wamsley, Donjacour, Scammell, Lammers & Stickgold, 2014), have reported having realistic dreams that they initially believed to be real experiences. Moreover, some people have memories for events that they are still not able to definitively classify as a real event or a dream (Kemp, Burt & Sheen, 2003; Rassin et al., 2001).

**Nightmares and their interpretation.** Many people who claim to have experienced traumatic events report that their nightmares are exact replicas of their traumatic experience. Indeed, an influential psychiatrist Bessel van der Kolk and his colleagues (1984) popularized this belief. However, the claim was based on faulty logic (the patient's statements of equivalence are affected by self-report biases) and methodological errors (a failure to collect transcripts of the dreams, again relying on self-report errors) and thus their claim has been repeatedly criticized in the literature. As the research methodologies improved, it became clear there was little, if any, support for the claim (McNally, 2003). Indeed, the idea that dreams are a literal replication would require accepting that memory operates like a video-recorder, a myth that memory research effectively dispelled more than a century ago (Ebbinghaus, 1913/1885). Unfortunately, many therapists, particularly in the psychoanalytic tradition, continue to believe that traumatic nightmares are a (relatively) unmodified memory of the actual event. Of course, the therapist's beliefs will impact what the client believes (Haverkamp, 1993)

**False feedback.** Presenting a person with false information about him/herself—for example, that he or she experienced a certain event—can increase that person's confidence that they had experienced the event. In turn, false feedback information may lead a person to develop a false belief or memory that they experienced an event that never happened (Berkowitz, Laney, Morris, Garry & Loftus, 2008). In essence, Alice,

potentially received false feedback from her roommate and the SANE nurse who assumed the sexual encounter was rape.

### Summary Conclusion

Based on my review and analysis of the documents and materials with which I was provided, it is my opinion as a memory expert that there were suggestive influences in this case which could have led to the development and maintenance of a distorted memory.

In addition to the above opinions, I am prepared to testify at trial about the workings of human memory, the effects of suggestion on memory, the mechanism underlying the creation of false memories, and the characteristics of false memories.

All of these opinions contained in this report are being offered within a reasonable degree of psychological and scientific certainty. Critically, some of these memory phenomena are outside, and indeed may run counter to, the knowledge and understanding of the common juror or layperson (Benton, Ross, Bradshaw, Thomas, & Bradshaw, 2006; Kassin, Tubb, Hosch, & Memon, 2001; Quas, Thompson, & Clarke-Stewart, 2005).

Submitted,

A handwritten signature in purple ink that reads "Deryn Strange". The signature is written in a cursive, flowing style.

Deryn Strange, Ph.D.  
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Date: August 5, 2021

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The scientific basis for my opinion is the extensive literature from human memory that is referenced in part in the following scientific journal articles and books:

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# Curriculum Vita

## DERYN STRANGE

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### Academic Posts

Professor	John Jay College of Criminal Justice August 2018
Associate Professor	John Jay College of Criminal Justice, CUNY January 2012 – August 2018
Doctoral Faculty	The Graduate Center, CUNY September 2009 – Present
Assistant Professor	John Jay College of Criminal Justice, CUNY September 2008 – 2011
Post-doctoral Fellow	University of Otago, New Zealand February 2006 – September 2008
Research Scientist	Victoria University of Wellington, New Zealand June 2005 – January 2006

### Education

BA	Psychology & Education, Victoria University of Wellington, 2000.
BSc Hons	Psychology, Victoria University of Wellington, 2001.
PhD	Psychology, Victoria University of Wellington, 2005 <i>Thesis: Factors that influence children's false memories.</i> <i>Advisors: Dr Maryanne Garry (1<sup>st</sup>), Dr Todd Jones (2<sup>nd</sup>)</i>
PostDoc	University of Otago, Psychology, 2006-2008 <i>Advisor: Professor Harlene Hayne</i>

### Research interests

How we remember and misremember traumatic events; how we promote and maintain memory distortions and whether we can correct those distortions; memory distortions in legal settings; the development and maintenance of false memories in children and adults.

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### Grants & Awards

#### ***Awarded:***

***Federal & Foundation Grants***



*Charles Koch Foundation: Criminal Justice & Policing Reform* (\$49,000): The Potential for Bias with Body Worn Cameras: Memory and the Interpretation of BWC Evidence (PI)

*Australian Research Council* (\$284,000): "How we remember and misremember traumatic experiences" (with Melanie Takarangi and Reg Nixon; DP14102661; 2014 - 2016)

*British Academy Small Grant* (£7,372): "Distinguishing Between True and False Autobiographical Memories Using the Autobiographical Implicit Association Test (aIAT)." (Co-PI with Melanie Takarangi; March 2010 – May 2011).

*Foundation for Research in Science and Technology, New Zealand, Post-doctoral Fellowship* (\$241,297). "Are False Memories More Likely to Occur in Some Situations Rather Than Others?" (August 2006 – August 2008).

### ***Internal Grants***

*PSC CUNY* (\$3,500): "Improving alibi generation by asking the right questions and visualizing the right responses." (PI; July 2018 – June 2019).

*Forensic Psychology Research Institute* (\$4,273): "Body-Worn Cameras in Legal Proceedings: Investigating the Biases that Shape Perceptions of Culpability." (PI)

*John Jay College OAR Seed Money Program* (\$2052): "Bait Questions and the Misinformation Manager" (PI; July 2016)

*PSC CUNY* (\$3,500): "The role of pre-traumatic intrusions in memory amplification for trauma." (PI; July 2016 – June 2017).

*PSC CUNY* (\$3,500): "External Sources of Suggestion in Memory Distortion for Trauma." (PI; July 2015 – June 2016).

*PSC CUNY* (\$5,807): "The role of post-traumatic intrusions in memory distortion for trauma." (PI; July 2014 – June 2015).

*PSC CUNY* (\$3,500): "Cognitive Processing Style and the Development of Post-Traumatic Stress Disorder." (PI; July 2012 – June 2013).

*Forensic Psychology Research Institute* (\$4,900): "Testing the role of hypothesized cognitive factors in the development of intrusive thoughts and avoidance." (PI)

*Flinders University Faculty Research Grant* (\$9,630): Mind the gap(s): Do people's perceptions of gaps in traumatic memory affect the accuracy of their memory for a traumatic event? (Co-PI with Melanie Takarangi)

*Psychology Department Research Fund* (\$3,000): "Testing the Role of Cognitive Factors in the Development of Post Traumatic Stress Disorder." (PI; February, 2011 – February 2012).

*John Jay College Research Assistance Program* (\$1,985): "The Role of Social Influence in Memory for Trauma." (PI; September 2010 – June 2011).

*John Jay College of Criminal Justice Special Research Fund* (\$2,000): "Alcohol and Eyewitness Memory." (PI; July 2010 – June 2011).

*PSC CUNY* (\$4,400): "Memory Reinterpretation and Consistency for Autobiographical Events." (PI; July 2009 – June 2010).

*John Jay College Research Assistance Program* (\$750; September 2009 – June 30 2010).

### **Grants to Fund Student Research**

#### ***Federal, Foundation & Society Grants***

Cardenas, S: *AP-LS Grant-in-Aid* (\$1,000): "The Effect of Police Questioning Technique and Schema Reliance on Innocent Alibi Generation, Consistency, Corroboration, and Credibility."

Jones, K: *AP-LS Grant-in-Aid* (\$925): "Examining the implications of reviewing body-worn camera footage on judgments of officer memory."

Segovia, D: *American Psychological Association Dissertation Research Award* (\$2,700). "The Legal System and Memory for Analogue Traumatic Experiences."

Segovia, D: *NSF EAPSI Program* (\$14,335). "Filling in the gaps of our traumatic memories: The role of thought suppression and working memory capacity." (Host Institution: Victoria University of Wellington, New Zealand; Host Advisor: Professor Maryanne Garry).

Austin, J: *AP-LS Grant-in-Aid* (\$650): "The Influence of Misinformation in Closing Arguments: How Jurors Remember Evidence."

#### ***Internal Grants***

Jones, K: *Doctoral Student Research Grant* (\$1,500). "Understanding the effect that review of police footage has on memory for critical incidents."

Crozier, W: *Doctoral Student Research Grant* (\$1,375). "The Misinformation Effect in Police Interrogations."

Crozier, W: *Forensic Psychology Research Institute* (\$1,500). "Automatically Guilty: Associations between Evidence and Guilt."

Lawson, V: *Forensic Psychology Research Institute* (\$1,496). "Using the Media to Correct Pretrial Misconceptions about Forensic Science"

Rodriguez, D: *CUNY Doctoral Award 2010* (\$800). "False Memories for Dissonance-Inducing Events"

Austin, J: *CUNY Doctoral Award 2010* (\$1,500): "Misinformation Errors in the Courtroom."

#### ***Awards & Honors:***

Fellow, Association for Psychological Science

Fellow, Psychonomic Society

City University of New York *Salute to Scholars Award* (2014)

John Jay College of Criminal Justice's *Scholarly Excellence Award* (2014)

Certificate of Appreciation for Advising Dean's List Students (2010-2016)

Flinders University International Visiting Research Fellowship (July - August 2012)

Stewart Travel Award (June 2009)

Memory Theme Travel Award, University of Otago, (2006, 2007, 2008)

## **Teaching**

### ***Undergraduate Courses***

100 level Popular Psychology  
 200 level Cognition  
 300 level Psychology & the Law  
 300 level Memory & Cognition  
 300 level Psychology, Crime, & Law

### ***Graduate Courses***

Memory, Trauma and the Law  
 Cognitive and Affective Aspects of Behavior  
 Memory  
 Traumatic Memories & Repression

## **Graduate Supervision**

### ***Current Doctoral Students***

Kristyn Jones  
 Stephanie Cardenas

### ***Graduated Doctoral Students***

William Crozier; *Automatically Guilty: Associations between Evidence and Guilt.*  
 Victoria Lawson; *The role of naive and media-induced prior beliefs about forensic evidence on juror judgments in a criminal trial.*  
 Daisy Segovia; *PTSD in the courtroom: The impact of PTSD on testimony and juror decision making.*  
 Dario Rodriquez; *False memories for dissonance-inducing events.*

### ***Current Masters Students***

Eric Korzun

### ***Graduated Masters Students***

Auset Alexander; *Brace for Impact: The Effects of Victim Impact Evidence and Judicial Instructions on Juror Memory Distortion and Sentencing Decisions in Capital Trials.* 2019 MA, John Jay College of Criminal Justice.  
 Matilde Ascheri; *Bait questions as a source of misinformation in police interviews: Does the race or age of the suspect increase jurors' memory errors?* 2018 BA/MA, John Jay College of Criminal Justice.  
 Kelsey Barnett; *The effects of conceptually driven versus data-driven encoding on traumatic memory amplification.* 2018 BA/MA, John Jay College of Criminal Justice.  
 Justine Rayborn; *Details in Testimony: How Hedge Words Influence People's Perceptions of Victim Testimony Credibility,* 2017, BA/MA, John Jay College of Criminal Justice  
 Lauren Giles; *Data-Driven Versus Conceptual Processing and Their Role in Memory Distortion for Traumatic Events,* 2016, BA/MA, John Jay College of Criminal Justice  
 Derek Bixby; *Reflective vs. Directive Limiting Instructions: Increasing the Effectiveness of Instructions to the Jury,* 2011, Masters, John Jay College of Criminal Justice.

Heleen Hoynck Van Papendrecht; *The Use of Object Size, Expertise & Drawing Ability in Interpreting Children's Drawings of Emotionally Significant Events*. Masters, University of Otago

Annelies Vredeveldt; *Violent False Memories for News About Crime: The Effects of Photographs and Personal Relevance*. Masters, University of Otago.

## Publications

† Indicates that the author was a student at the time of publication.

Sanson, M., Crozier, W. E., & Strange, D. (in press). Inflating the credibility of forensic science: Effects of court context and non-probative photos. *Zeitschrift für Psychologie*

Crozier, W. E., Luke, T. J. & **Strange, D.** (in press). Taking the Bait: Interrogation questions about hypothetical evidence may inflate perceptions of guilt. *Psychology, Crime and Law*.

† Jones, K., Crozier, W. E. & **Strange, D.** (in press). Right "Look There! The Effect of Perspective, Attention, and Instructions on How People Understand Recorded Police Encounters." *Behavioral Sciences and the Law: Special Issue on Policing*

† Jones, K., & **Strange, D.** (2019). The impact of hedged testimony on judgments of credibility. *Applied Cognitive Psychology*

†Alceste, F., †Crozier, W. E. & **Strange, D.** (2019). Warning! Contaminated confession ahead: How the source and consistency of key crime details in a confession influence memory and attributions. *Journal of Applied Research in Memory and Cognition*

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*Non-Empirical Publications (peer-reviewed)*

- †Crozier, W. E., **Strange, D.** & Loftus, E. F. (2017). Memory errors in alibi generation: How an alibi can turn against us. *Behavioral Sciences and the Law*, DOI: 10.1002/bsl.2273.
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- Sutherland, R., **Strange, D.,** & Garry, M. (2007). We've got the whole child witness thing figured out. Or do we? p. 91-104. In Della Sala, S. (Ed.), *Tall tales about the brain: Separating fact from fiction*. UK: John Wiley & Sons.
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**Strange, D.** & Jones, K. (2018). Why body cams might not clear things up. *The Conversation*, April 3, 2018. <https://theconversation.com/why-bodycam-footage-might-not-clear-things-up-94000>

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*Under review*

Jones, K. A. & Starng, D. (revise and resubmit). Body-Worn Cameras: Psychological Science Suggests the Hype May Be Unwarranted. *Perspectives on Psychological Science*

Crozier, W. E., Rico, G., Alceste, F. & Strange, D. (under review). Inaccurate but Unconvinced: Inaccurate Confessions affect guilt ratings.

†Nahleen, S., Takarangi, M. K. T., & **Strange, D.** (under review). Exposure to repeated misinformation does not increase memory distortion after a traumatic event.

Cardenas, S. A., Crozier, W. E. & **Strange, D.** (under review). Right Place, Wrong Time: The limitations of mental reinstatement of context on alibi-elicitation

Crozier, W. E. & **Strange, D.** (under review). Automatically Guilty? Measuring associations between Evidence and Guilt using the DRM

*In preparation*

†Nahleen, S., Takarangi, M. K. T., **Strange, D.** & Nixon, R. (in prep). Can attention to source reduce source memory failures when people remember traumatic events?

†Skurray, R., Foster, J. L., **Strange, D.** & Takarangi, M. K. T. (in prep). Failures in monitoring and noticing thoughts of traumatic experiences: Meta-awareness and the role of working memory capacity.

Lawson, V. Z. & **Strange, D.** (in prep). Using the Media to Correct Misconceptions about the Validity of Forensic Science Evidence.

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## Invited Addresses & Workshops

Strange, D. (June, 2018). *The limitations of Memory*. Invited Address, State Administrative Law Judiciary's Annual Conference, Georgia



- Strange, D. (October, 2017). *The Puzzles of Memory: Memory Failures in the Courtroom*. Invited Address, National Administrative Law Judiciary's Annual Conference, Fordham Law School, New York.
- Strange, D. (March, 2017). *Memory Failures: Why we can forget significant event details and remember things that never happened*. Invited Address, Administrative Judicial Institute, New York.
- Strange, D. (September, 2016). *Can we handle the truth about witness memory?* Invited Address, International Court of Arbitration, International Chamber of Commerce, New York.
- Strange, D. (March, 2016). *Memory Distortion for Traumatic Events*. Public Colloquium at Lehman College, New York.
- Strange, D. (September, 2015). *Memory Distortion for Traumatic Events: Causes and Consequences*. Public Colloquium at The City College of New York, New York.
- Strange, D. (June, 2015) *Women in Cognitive Science: Time Management*. Panel at the biannual meeting of the Society for Applied Research in Memory and Cognition, Victoria, Canada
- Strange, D. (June, 2013) *Women in Cognitive Science: Negotiating early career challenges*. Panel at the biannual meeting of the Society for Applied Research in Memory and Cognition, Rotterdam, Netherlands
- Strange, D. (November, 2012) *Undergraduate Research in the Social Sciences*. CUNY Honors Opportunities Conference, Macaulay Honors College.
- Strange, D. (June, 2012). *False memories for analogue trauma*. Seminar Series, Victoria University of Wellington, New Zealand.
- Strange, D. (November, 2007). *Reinterpretation of Negative Autobiographical Events*. Departmental Brown Bag Seminar, John Jay College of Criminal Justice.
- Strange, D. (November, 2007). *False memories: How we come to remember events that never happened*. Memory on Trial: The role of memory in the courtroom, Dunedin, New Zealand.
- Strange, D. (November, 2007). *False memories: How we come to remember events that never happened*. Australian False Memory Association, Sydney, Australia.
- Strange, D. (November, 2007). *Who "remembers" and what happens when they do*. Australian False Memory Association, Sydney, Australia.
- Strange, D. (May, 2004). *Children's perceptions of event plausibility determine false memories*. Invited Talk, presented at the annual meeting of the American Psychological Society, Chicago, USA.

### **Papers Presented at Scientific Meetings**

- Jones, K. A., Crozier, W. E., Merriwether, E. & Strange, D. (October, 2019) *Not in Sight: Source Monitoring Errors for Ambiguous Body-Worn Camera Footage*. Paper included in Symposium "The Candid Body-Worn Camera? How officer body-worn cameras inform

- (and misinform) our understanding of police encounters” at Technology, Mind, and Society, APA, Washington, D.C.
- Alceste, F. A., Crozier, W. E., & Strange, D. (2019). *Misremembered, but forgotten: Evaluating and remembering contaminated confessions*. Paper presented at the Meeting of the Society for Applied Research in Memory and Cognition, Cape Cod, MA.
- Cardenas, S.A., Crozier, W. E., Strange, D. (June, 2019) Here Today, Gone Next Week: The Limitations of Reinstating the Context for Alibi Memories. Paper presented at the Society for Applied Research in Memory and Cognition Conference, Cape Cod, MA.
- Crozier, W. E., Cardenas, S.A., Strange, D. (June, 2019) Beyond Believability: Observer’s Credibility and Memory Quality Ratings for Mock Crime Alibis. Paper presented at the Society for Applied Research in Memory and Cognition Conference, Cape Cod, MA.
- Rico, G., Crozier, W. E., Alceste, F., & Strange, D. (June, 2019). *Tell me where, not why: Juror sensitivity to explanations for confession inaccuracies*. Paper presented at the 13th Bi-Annual Meeting of SARMA, Cape Cod, Massachusetts.
- Jones, K. A. & Strange, D. (March 2019). *The role of attention on judgments of police body-worn camera footage*. Paper presented at the annual meeting of American Psychology and Law Society, Portland, OR, USA.
- Rico, G., Crozier, W. E., Alceste, F., & Strange, D. (March, 2019). *Inaccurate and unconvinced: Effect of explanations for confession inaccuracies*. Paper presented at the 50th Annual Meeting of AP-LS, Portland, Oregon.
- Jones, K. A., Todd, T., Strange, D. & Chauhan, P. (March 2019). *Context information shapes how people see body-worn camera footage*. Data-blitz presented at the annual meeting of American Psychology and Law Society, Portland, OR, USA.
- Cardenas, S.A., Crozier, W. E., Strange, D. (March, 2019) Right Place, Wrong Time: The Limitations of Mental Reinstatement of Context for Alibi Elicitation. Paper presented at the American Psychology & Law Society Conference, Portland, OR. (APLS Outstanding Student Paper Winner)
- Cardenas, S.A., Alexander, A., Strange, D. (March, 2019) Life or Death in Plain Sight: The Role of Emotional Evidence on Juror Emotions, Decision-Making & Memory. Poster presented at the American Psychology & Law Society Conference, Portland, OR.
- Cardenas, S.A., Crozier, W. E., Strange, D. (November, 2018) Picture This: The Influence of Schematic Processing and Mental Context Reinstatement on Alibi Generation. Paper presented at the 59<sup>th</sup> Annual Meeting for the Psychonomic Society, New Orleans, LA; the 2019 North Carolina Cognition Conference, Raleigh, NC; and the 2019 Graduate Center Psychology Research Day, New York, NY.
- Alceste, F. A., Crozier, W. E., & Strange, D. (2018, March). *Misremembered, but forgotten: Evaluating and remembering contaminated confessions*. Paper included in symposium "Why Memory Matters: Errors (and Solutions) in Criminal Investigations." at American Psychology and Law Society Annual Meeting, Memphis, TN, USA.
- Crozier, W. E., Rico, G., Alceste, F., & Strange, D. (March, 2018). *Inaccurate Confessions: Problems for Memory and Potential Solutions*. Paper included in symposium "Why

- Memory Matters: Errors (and Solutions) in Criminal Investigations." at American Psychology and Law Society Annual Meeting, Memphis, TN, USA.
- Luke, T. J., Crozier, W. E. & Strange, D. (March, 2018). *Taking the bait: Interview questions that suggest the existence of evidence inflate perceptions of guilt*. Paper included in symposium, "Why Memory Matters." at American Psychology and Law Society Annual Meeting, Memphis, TN, USA.
- Cardenas, S. A., Crozier, W., Strange, D. (March, 2018) Improving alibi generation by asking the right questions and visualizing the right responses. Paper included in symposium "Why Memory Matters: Errors (and Solutions) in Criminal Investigations." at American Psychology and Law Society Annual Meeting, Memphis, TN, USA.
- Crozier, W. E., Luke, T., & Strange, D. (March, 2017). *The Bait Question as a Source of Misinformation in Police Interviews: Implications and Resilience of Bait Question-Caused Memory Distortion*. Paper presented in symposia, "Police Interrogations & Confessions." American Psychology and Law Society, Seattle, WA, USA
- Jones, K. A. Crozier, W. E., & Strange, D. (March, 2017). *Is Body-Worn Camera Footage Objective? Evidence Demonstrates that Opposing Narratives Shape Perceptions of Culpability in Police-Citizen Interactions*. Paper presented in symposia, "Police Interrogations & Confessions." American Psychology and Law Society, Seattle, WA, USA
- Luke, T. J., Crozier, W. & Strange, D. (January, 2017). *Memory errors in police interviews: The bait question as a source of misinformation*. Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Sydney, Australia.
- Crozier, W., Luke, T. J., & Strange, D. (January, 2017). *You have been warned: Can warnings mitigate the misinformation effect from misleading evidence in bait questions*. Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Sydney, Australia.
- Jones, K. A., Crozier, W., & Strange, D. (January, 2017). *The potential for bias with body worn cameras: Examining factors that influence memory and interpretation of BWC evidence*. Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Sydney, Australia.
- Oulton, J., Strange, D., Nixon, R. & Takarangi, M. (January, 2017). *Imagining trauma: Memory amplification and the role of elaborative cognitions*. Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Sydney, Australia.
- Nahleen, S., Takarangi, M. & Strange, D. (January, 2017). *Repeated exposure to misleading post-event information after a traumatic event: The effects on memory*. Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Sydney, Australia.
- Burton-Wood, C., Strange, D., Rasmussen, A. S. & Garry, M. (January, 2017). *What we want to forget*. Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Sydney, Australia.
- Crozier, W. & Strange, D. (January, 2017). *Automatically guilty: Associations between evidence and guilt*. Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Sydney, Australia.

- Sanson, M., Garry, M. & Strange, D. (January, 2017). *The role of expectancies in the effects of trigger warnings*. Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Sydney, Australia.
- Crozier, W. & Strange, D. (July, 2016). *Automatically guilty: Associations between evidence and guilt*. Paper presented at the International Conference on Memory, Budapest, Hungary.
- Luke, T. J., Crozier, W. & Strange, D. (July, 2016). *Memory errors in police interviews: The bait question as a source of misinformation*. Paper presented at the International Conference on Memory, Budapest, Hungary.
- Takarangi, M. K. T., †Green, D., Strange, D. & Lindsay, D. S. (June, 2015). *Measuring meta-awareness of intrusive thoughts about emotional events*. Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Victoria, Canada.
- †Crozier, W. E. & Strange, D. (June, 2015). *Correcting the Misinformation Effect*. Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Victoria, Canada.
- †Colloff, M. F., Wade, K. A. & Strange, D. (June, 2015). *Lineup composition: Accommodating suspects with distinctive features*. Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Victoria, Canada.
- Garry, M., Strange, D. & Scharling Rasmussen, A. (June, 2015). What memory would you save? What memory would you erase? Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Victoria, Canada.
- Takarangi, M. K. T., †Oulton, J. M., Strange, D., & †Quayum, S. (April, 2015). *Memory amplification for traumatic experiences: A laboratory analogue*. Paper presented at the 42nd Australasian Experimental Psychology Conference, Sydney, Australia.
- Segovia, D., Strange, D., & Takarangi, M. K. T. (August, 2013). *Data-driven processing at encoding promotes memory distortion for traumatic events*. Paper presented at the annual convention of the American Psychological Association, Honolulu, HI.
- Strange, D. & Takarangi, M. K. T. (June, 2013). *Manipulations at encoding affect error rates for a traumatic film*. Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Rotterdam, Netherlands.
- Segovia, D., Strange, D. & Takarangi, M. K. T. (June, 2013). *Disorganized memories of a traumatic event promote intrusions*. Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Rotterdam, Netherlands.
- Takarangi, M. K. T., Strange, D., & Lindsay, D. S. (June, 2013). *Approaches to measuring intrusive thoughts about trauma*. Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Rotterdam, Netherlands.
- Takarangi, M. K. T., Strange, D., & Lindsay, D. S. (April, 2013). *Measuring trauma-related mind wandering and intrusive cognition*. Paper presented at the annual Experimental Psychology Conference, Adelaide, Australia.

- Strange, D., & Takarangi, M. K. T. (June, 2011). *False memories for missing aspects of traumatic events*. Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, New York, New York.
- Takarangi, M. K. T., †Segovia D., †Dawson, E., & Strange, D. (June, 2011). *Emotional impact feedback affects the development of intrusive memories for trauma*. Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, New York, New York.
- †Austin, J. L., †Zimmerman, D. M., & Strange, D. (March, 2011). *The influence of misinformation in closing arguments: How jurors remember and misremember evidence*. Paper presented at the annual convention of the American Psychology-Law Society, Miami, Florida.
- †Houghton, E., Takarangi, M. K. T., & Strange, D. (June, 2010). *Distinguishing between true and false autobiographical memories using the autobiographical implicit association test (aIAT)*. Paper presented at the 20th Conference of the European Association of Psychology and Law, Gothenburg, Sweden.
- Strange, D., Dysart, J., & Loftus, E. (March, 2010). *Where were you? Alibi generation, accuracy and consistency*. Paper presented at the annual convention of the American Psychology-Law Society, Vancouver, Canada.
- Dysart, J. & Strange, D. (March, 2010). *A survey of police officers' beliefs about alibis and alibi investigations*. Paper presented at the annual convention of the American Psychology-Law Society, Vancouver, Canada.
- Strange, D. & Takarangi, M. (July, 2009). *Reinterpretation of negative autobiographical events*. Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Kyoto, Japan.
- Takarangi, M. & Strange, D. (July 2009). *For better or worse: External feedback affects autobiographical memory for positive events*. Paper presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Kyoto, Japan.
- Strange, D. (May, 2009). *Feedback affects memory for negative events*. Poster presented at the annual convention of the Association for Psychological Science, San Francisco.
- Garry, M., Strange, D., & Bernstein, D. (July, 2008). *Innocuous photographs cause people to remember news events that never happened*. Paper presented at the annual convention of the European Association of Psychology and Law, Maastricht, The Netherlands.
- †Hoynck Van Papendrecht, H., Strange, D., Candel, I., & Hayne, H. (July, 2008). *Children's drawings of emotionally significant events: Object size, expertise, and drawing ability*. Paper presented at the annual convention of the European Association of Psychology and Law, Maastricht, The Netherlands.
- Takarangi, M., Strange, D., & Garry, M. (July, 2007). *The role of schema-relevant information in memory for crime*. Paper presented at the biannual meeting of the Society for Applied Research in Memory and Cognition, Maine, USA.
- Strange, D., Wade, K., & Hayne, H. (July, 2007). *The dark side of the moon: Childhood amnesia enhances suggestibility to false memories*. Paper presented at the biannual meeting of the Society for Applied Research in Memory and Cognition, Maine, USA.

- Strange, D., Hayne, H., & Garry, M. (July, 2006). *A photo and a simple suggestion is enough to create a false memory*. Paper presented at the 4<sup>th</sup> International Conference on Memory, Sydney, Australia.
- Strange, D., Bernstein, D. M., †Kinzett, T., & Garry, M. (July, 2006). *Photos affect memory for newspaper stories*. Paper presented at the 4<sup>th</sup> International Conference on Memory, Sydney, Australia.
- Takarangi, M., Strange, D., & Garry, M. (July, 2006). *Photos influence memory for crime-related newspaper stories*. Paper presented at the 4<sup>th</sup> International Conference on Memory, Sydney, Australia.
- †Parker, S., Garry, M., Strange, D., & Cahill, L. (July, 2006). *Physiologically-induced cortisol increases modulate misinformation effects*. Paper presented at the 4<sup>th</sup> International Conference on Memory, Sydney, Australia.
- Strange, D., Sutherland, R., & Garry, M. (January, 2005). *False photos and plausibility: children's perceptions of event plausibility determine false memories*. Paper presented at the Society for Applied Research in Memory & Cognition, Wellington, New Zealand.
- Strange, D., Bernstein, D., †Kinzett, T., & Garry, M. (April, 2005). *Photos affect memory for newspaper stories*. Paper presented at the 32nd Australasian Experimental Psychology Conference, Melbourne, Australia
- Strange, D., Sutherland, R. & Garry, M. (April, 2004). *How to interview your way to a false memory*. Paper presented at the Australian & New Zealand Forensics Society conference, Wellington, New Zealand.
- Strange, D., Sutherland, R. & Garry, M. (April, 2004). *The role of plausibility in the development of children's false memories*. Paper presented at the 31<sup>st</sup> Australasian Experimental Psychology conference, Dunedin, New Zealand.
- Garry, M., Strange, D., Wade, K.A., French, L. & Sutherland, R. (November-December, 2004). *Digital technologies and personal memory*. Workshop on memory, mind and media, Sydney, Australia.
- Strange, D., Sutherland, R., Garry, M. & Hayne, H. (July, 2003). *A right royal road to a false childhood memory*. Society for Applied Research in Memory & Cognition, Aberdeen, Scotland.
- Strange, D., Sutherland, R. & Garry, M. (September, 2003). *How to interview your way to a false memory*. Paper presented at the meeting of the Skeptics Society of New Zealand, Wellington, New Zealand.
- Strange, D. (August, 2002). *Drawing out Children's False Memories*. Paper presented at the meeting of the New Zealand Psychological Society, Christchurch, New Zealand.

### **Posters Presented at Scientific Meetings**

- †Jones, K. A. & Strange, D. (May, 2018). *A Bias Blindspot for Witnessing Crimes Live and Via Camera Footage*. Poster accepted for presentation at the 30th Annual Convention of the Association for Psychological Science, San Francisco, USA.

- †Jones, K. A., Crozier, W. E., Strange, D. (2018, March). *A bias blindspot for viewing and remembering criminal events*. Poster to be presented at the annual meeting of the American Psychology-Law Society, Memphis, TN.
- †Crozier, W. E. & Strange, D. (November, 2017). *Automatically Guilty: DRM associations between evidence and guilt*. Poster presented at the annual meeting of the Psychonomic Society, Vancouver, Canada.
- Takarangi, M. K. T., Oulton, J. M., Strange, D., & Nixon, R. D. V. (May, 2017). *Involuntary cognitions about trauma: Could spontaneous elaborative “non-memories” explain memory amplification?* Poster presented at the 29th Annual Convention of the Association for Psychological Science, Boston, USA.
- †Oulton, J., Takarangi, M. K. T., Strange, D. (May, 2017). *Involuntary Cognitions about Trauma: Could Spontaneous Elaborative “Non-Memories” Explain Memory Amplification?* Association for Psychological Science’s Annual Meeting, Boston, MA.
- †Oulton, J., Takarangi, M. K. T., Strange, D. & †Quayum, S. (June, 2015). *Memory amplification for traumatic experiences: Investigating the relationship between memory distortion and PTSD symptoms in the laboratory*. Poster presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Victoria, Canada.
- †Quayum, S., Takarangi, M. K. T., Strange, D., Nixon, R. & †Oulton, J. (June, 2015). *Memory amplification for traumatic experiences: Are people susceptible to post-event information about trauma?* Poster presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Victoria, Canada.
- †Skurray, R., Takarangi, M. K. T., Strange, D. & Foster, J. (June, 2015). *Failures in meta-awareness for traumatic experiences: The role of working memory capacity*. Poster presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Victoria, Canada.
- †Sanson, M., Garry, M. & Strange, D. (June, 2015). *The effect of “trigger warnings” on involuntary memories*. Poster presented at the biannual convention of the Society for Applied Research in Memory and Cognition, Victoria, Canada.
- Takarangi, M. K. T., †Nayda, D., Nixon, R. & Strange, D. (June, 2014). *Metacognitive beliefs and meta-awareness of intrusive thoughts among trauma victims*. Poster presented at the biennial conference of the International Society for Justice Research in New York, NY.
- †Rodriguez, D. N., Strange, D., †Bonomo, N., & †Salwierz, M. (May, 2014). *Dissonance-induced false memories: Evidence from an induced-compliance paradigm*. Poster presented at the annual meeting of the Association for Psychological Science, San Diego, CA.
- †Rodriguez, D. N., Strange, D., †Salwierz, M., & †Bonomo, N. (May, 2014). *Dissonance-induced false memories: Evidence from a free-choice paradigm*. Poster presented at the annual meeting of the Association for Psychological Science, San Diego, CA.
- †Lawson, V. Z., †Lee, A., & Strange, D. (2014, March). *The effect of handcuffs and unbiased instructions on showup identification decisions*. Poster presented at the annual conference of the American Psychology-Law Society in New Orleans, LA.

- Takarangi, M. K. T., Strange, D., & Lindsay, D. S. (November, 2012). *Meta-Awareness of intrusive thoughts about trauma*. Poster presented at the 53<sup>rd</sup> Annual General Meeting of the Psychonomic Society, Minneapolis, Minnesota, USA.
- Takarangi, M. K. T., †Segovia, D., †Dawson, E. & Strange, D., & (May, 2012). *Emotional impact feedback affects the development of Post-Traumatic Stress symptoms for an analogue traumatic event*. Poster presented at the 24th Annual Convention of the Association for Psychological Science, Chicago, USA.
- †Lawson, V. Z., & Strange, D. (June, 2011). *Media and memory: The effects of a warning and story enhancement on memory for written and televised news reports*. Poster presented at the biannual convention of the Society for Applied Research in Memory and Cognition, New York, New York.
- †Austin, J. L., †Zimmerman, D. M., & Strange, D. (June, 2011). *Misinformation in closing arguments: How jurors remember and misremember evidence*. Poster presented at the biannual convention of the Society for Applied Research in Memory and Cognition, New York, New York.
- Takarangi, M. K. T., †Houghton, E., & Strange, D. (2010, May). *Distinguishing between true and false autobiographical events using the autobiographical implicit association test (aIAT)*. Poster presented at the 22nd Annual Convention of the Association for Psychological Science, Boston, USA.
- †Austin, J., †Pereira, I., & Strange, D. (May, 2010). *Television produces more false memories for news content than newspapers*. Poster presented at the 22nd Annual Convention of the Association for Psychological Science, Boston, USA.
- Takarangi, M. & Strange, D. (May, 2008). *Memory reinterpretation for positive and negative autobiographical events*. Poster presented at the 20th annual convention of the American Psychological Society, Chicago, USA.
- Strange, D., Garry, M., & Bernstein, D. (May, 2008). *Photographs cause people to remember news events that never happened*. Poster presented at the 20th annual convention of the American Psychological Society, Chicago, USA.
- Strange, D., Wade, K., & Hayne, H. (May, 2007). *The dark side of the moon: Childhood amnesia enhances suggestibility to false memories*. Poster presented at the 19th annual convention of the American Psychological Society, Washington DC, USA.
- Strange, D., Bernstein, D., †Kinzett, T. & Garry, M. (May, 2005). *Photo Content Affects What Is Remembered From News Stories*. Poster presented at the 17th annual convention of the American Psychological Society, Los Angeles, USA.

### Professional Affiliations

Association for Psychological Science (Fellow)  
 Society for Applied Research in Memory and Cognition (President)  
 Psychonomic Society (Fellow)  
 American Psychology and Law Society



Women in Cognitive Science  
 Society for the Improvement of Psychological Science  
 Heterodox Academy

### **Professional Service**

President, *Society for Applied Research in Memory and Cognition* (SARMAC; January 2017 -)  
 Governing Board, *Society for Applied Research in Memory and Cognition* (SARMAC; 2012 - 2015, relected 2016 - 2019)  
 Program Committee Co-Chair, *Society for Applied Research in Memory and Cognition, Conference X*, Rotterdam 2013  
 Program Committee Chair & Co-Chair of Organizing Committee, *Society for Applied Research in Memory and Cognition, Conference IX*, New York City 2011  
 Ad hoc reviewer for (in alphabetical order):  
*Acta Psychologica, Applied Cognitive Psychology, Child Development, Consciousness & Cognition, Experimental Psychology, Frontiers in Psychiatry, Journal of Applied Research in Memory and Cognition, Journal of Experimental Psychology: Applied, Journal of Experimental Social Psychology, Law and Human Behavior, Memory & Cognition, Memory Studies, Memory, New Zealand Journal of Psychology, Psychological Science, Psychology of Consciousness: Theory, Research and Practice, Psychology of Popular Media Culture, Psychology, Crime and Law, Psychonomic Bulletin and Review, Quarterly Journal of Experimental Psychology, Social Cognition, Visual Communication Quarterly.*  
 Coordinator, Memory Theme Symposium, University of Otago, November 2006  
 Coordinator, Biannual International SARMAC Conference, Wellington 2005  
 Guest Editor, *Applied Cognitive Psychology*  
 Grant Reviewer, *PSC CUNY*  
 Advisory Board, 2008 - 2010, *Innocence Project New Zealand*  
 Textbook Reviewer, *Cognition and Introduction to Psychology Textbooks* (Pearson, Oxford University Press)

### ***College/University Level***

Department Personnel and Budget Committee (Psychology; 2015 - Present).  
 Chair of Assessment Committee (Psychology), John Jay College of Criminal Justice, (2016 - Present)  
 Deputy Chair for Assessment (Psychology), John Jay College of Criminal Justice, (2011 - 2016)  
 Undergraduate Major Coordinator (Psychology), John Jay College of Criminal Justice, (2011 - 2016).  
 Advisory Board, Office of Undergraduate Research, John Jay College of Criminal Justice (2012 - Present).  
 Co-Director, Office of Undergraduate Research, John Jay College of Criminal Justice (2013 - 2016).

Assistant Director, Office of Undergraduate Research, John Jay College of Criminal Justice (2012 – 2013).

Graduate Council, The Graduate Center, CUNY, (2010 – 2015).

Departmental Curriculum Committee, John Jay College of Criminal Justice, (2009-2015).

Planning Committee, Transformations in Teaching and Learning: Research and Evidence Based Practices at CUNY, 2013.

Delegate to the *Council on Undergraduate Research's* workshop on "Institutionalizing Undergraduate Research," City College, CUNY, April 2012 and November 2013

Scholarships Committee, John Jay College of Criminal Justice, 2011 - 2012

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### **Trial Consulting**

Expert testimony provided in state, federal and military courts on memory issues (e.g., the accuracy of eyewitness identifications, memory distortion, recovered and false memories).

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**Updated February 2019**

Alan A. Wartenberg, MD, FACP, DFASAM  
32 Trout Brook Lane  
Hope, Rhode Island 02831  
January 3, 2022

Michael A. Nam-Krane, Esq.  
P.O. Box 301218  
Boston, Massachusetts 02130-1218

Re: William Berry appellate matter

Dear. Mr. Nam-Krane:

I have reviewed, at your request, the following documents: Alice's medical records, grand jury testimony of Alice<sup>1</sup>, and Caitlin Chiupka, Detective Barrett, and of roommate Katelin Roche, memo of testimony in Commonwealth V. Berry, Report of Dr. Waldman – Revised of 4/24/20, Report of Dr. Strange in MA v. Berry 1/6/21 and amended argument of 8/16/21, and records from Doctors Express Urgent Care for Alice.<sup>1</sup> I also reviewed the case Hilliard v. Curtis (2009), State of Michigan, Eastern District, Southern Division, a precedent with bearing on this matter. I have also made a comprehensive review of the medical literature on the effects of alcohol and other sedatives on memory, as well as on the accuracy of those memories and the confounding effects of post-memory conversations and other prompts, including that of confabulation. These will be covered in detail in my discussion of the case.

I am a physician trained and Board Certified in both Internal Medicine and Addiction Medicine. In my first 20 years of practice, I was involved in both Internal and Addiction Medicine practice, but in the last 20 years my practice has been limited to Addiction Medicine. I was initially certified in Addiction Medicine by the American Society of Addiction Medicine (ASAM) in 1986, following my Board Certification in Internal Medicine in 1980. I was again certified by ASAM in 1996 and was certified by the American Board of Addiction Medicine in 2010.

I have been accepted as an expert witness in several courts in both civil and criminal cases. I have testified in several Boston District courts, as well as in Superior Courts, and in District Courts in both Rhode Island and Connecticut. I have also testified in Federal District Courts in Boston, Providence RI and Portland ME. I have also been an Expert Witness in administrative matters brought before the Board of Registration in Medicine in Massachusetts and have appeared for both plaintiffs and defendants in several medical liability cases.

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<sup>1</sup> "Alice" is a pseudonym.

## Summary of the Case

Mr. Berry is appealing the April 2016 jury conviction for aggravated rape, aggravated burglary and breaking and entering at night with intent to commit a felony. He was sentenced to 12-16 years for the aggravated rape, with 8 years of probation after his aggravated rape sentence. Mr. Berry was the only witness called by defense counsel at his trial. It is Mr. Nam-Krane's claim that his prior counsel did not demonstrate competence in failing to obtain expert testimony on the effects of alcohol on memory, the nature of alcohol-induced amnesic periods ("blackouts"), and on the likelihood that such alcohol-induced changes in behavior and memory played a role in the events that led to his conviction. It is Mr. Nam-Krane's claim that, had such expert testimony been presented, it would have led to the presence of reasonable doubt by the jury, regarding the testimony of Alice.

Alice was a 25-year-old graduate student on August 24, 2014, living in a first-floor apartment in Allston MA. The apartment was part of a three-family house, and Alice had two women housemates. The door to Alice's apartment was noted to not always close properly. Each apartment had a buzzer which could allow people to enter from outside. On the evening on 8/23/14, Alice went with a classmate Caitlin C. to a gathering of about 10 other people from their graduate school program. Alice reported a glass of wine being consumed before they left the apartment around 9 PM. First, they stopped at another apartment on Mission Hill where Alice had what she described as two "very strong" drinks and reported that she was "feeling the effects of alcohol."

They both then went to a bar near the Boston Garden, where Alice reported drinking 4-5 more drinks. Alice left the bar with Caitlin about 1:30 AM on 8/24/14 and arrived home at about 1:45 AM. Alice called her roommate Katelyn to let them in, even though Alice had her own keys in her purse. Before Katelyn went to bed that night, she reported that she made sure that she locked her bedroom windows and the common area windows, as well as checking that the front and back doors were locked. Katelyn was sleeping, and did not answer the phone, but after repeated buzzing of the doorbell, Katelyn let them in at 1:53 AM. Katelyn reported that she observed that the front door was closed after letting them in.

Alice stated at trial that she did not remember going to sleep, or even being buzzed into the house that night. She did not remember anyone coming into her apartment in the middle of the night. Her friend Caitlin reported that Alice was "barely functional, like I am supporting as we walk, and I am taking care of her belongings. Caitlin put Alice to bed around 2:15 AM. Alice's next memory, which she described as "waking up," was that Mr. Berry was in her bed and was having intercourse with his penis in her vagina from the rear in a "spooning" position. She told him to stop, and then told him again, and reported that he stopped within seconds of her second request. She pushed him off of her body.

She does not remember whether he wore a condom or if he ejaculated. She got out of bed and told Mr. Berry to leave. He began to put on his clothes, finished dressing, took his backpack and went out the front door. She later went to her friend Caitlin who was sleeping in the living

room. Caitlin remembered Alice telling her that she “brought someone home last night.” Caitlin told her that she was alone when Caitlin put her to bed. However, Caitlin remembered that Alice wondered if someone had knocked on her window and she let them in the door. She had done this in the past. Later that day, Alice went with her mother to a hospital Emergency Department where she was evaluated for a sexual assault.

### **William Berry’s History**

Mr. Berry was identified by DNA from Alice’s rape kit. He initially denied any knowledge of Alice or of having sexual intercourse with her. When presented with the DNA evidence, he admitted that he was not telling the truth out of fear for his relationship with his fiancée, who was very jealous, and had previously physically assaulted him out of that jealousy. He stated that he had met Alice previously, having seen her at several “night spots” in the area. He had seen her on the street, where “some guy was bugging her, and I offered to get her a cab.” He ultimately helped her walk home, and stated that she was “pretty tipsy, like she had to put her arm around me. I put my arm around her to support her.” He stated that Alice had told him that, if her were in the neighborhood, he “could just knock on her window if the light was on.”

Mr. Berry further stated in his testimony that “I could see the light in her bedroom from Harvard Avenue...I went to her house, I knocked on the window. She looked out the window, saw it was me, came outside. We hung out on the porch. We talked some more. We started making out.” Mr. Berry reported that while she was not “completely wasted,” she was “as drunk as she was when they first met.” He reported that they had sex three times that night, but that he only used a condom the first time.

He stated that they had sex again in the morning. Alice asked him that morning if he were using a condom. When he said no, she got out of bed and seemed upset. She told him to leave, and he dressed and left by the front door.

### **Discussion**

The primary issue in this case revolves around the question as to whether Alice. was in the midst of an alcohol-related amnestic period, colloquially known as a “blackout,” during the sexual encounter with Mr. Berry. “Blackouts” are an unfortunate misnomer for this condition because it is frequently interpreted, by both lay persons and even uninformed health care workers, to mean that an individual is unconscious, or sedated to the point of insensibility. However, this is not the case. An individual who is in an alcohol-associated amnestic episode may appear totally conscious, and function as they normally do. If they are relatively tolerant to the effects of alcohol, signs of impairment (such as imbalance, clumsy gait, slurred speech) may be partially or completely absent. There are case reports of intoxicated surgeons operating on patients, lawyers expertly arguing in court and even pilots flying aircraft during blackouts. These individuals had no memory of having carried out these functions, even though

all of those around them could not tell any difference in their behavior or their skills. I have personally witnessed this on scores of occasions with intoxicated patients.

Alcoholic amnestic episodes occur most commonly when individuals reach a high alcohol level very quickly, and usually require either significant alcohol levels (usually greater than 150 mg/dl, or 0.15 grams percent) or the co-ingestion of other synergistic drugs, particularly benzodiazepines. There is no evidence or claim of other drug involvement, so it is likely that Alice had a significant alcohol level. This is also supported by her signs of intoxication at the time that she went home and arrived at her apartment. It also appears that this was a complete blackout (en bloc) since there was initially virtually no retained memory of the events. The fact that she did not remember even arriving at home or getting to bed is further evidence of the depth of this amnestic event. Following blackout events, it is possible for memories to return, most often gradually and in small “pieces” of memory. Sometimes, memories may return all at once, particularly if a significant trigger is present. However, there is also the phenomenon of confabulation, where the individual may incorporate the memories and versions of event recounted by others, including friends, witnesses or even police officers or others who are involved in interrogating the individual, often by giving their own interpretation of what they believed must have happened. Confabulation of memory can also occur internally, where individuals who cannot remember all of an event will “fill in the holes” of their memory with an accounting of how they believe they would likely have or must have behaved in those circumstances.

It is very difficult for individuals to separate true recovered memories from confabulated memories, and often their recollection of the event is some combination of things they actually remember and memories that may have been suggested, or even “planted,” by other individuals. The longer the time between the actual event, and the more additional interaction with other witnesses who attempt to “assist” the individual with their recollection of events, the more difficult it is to determine which part of the memory is genuine, which are altered in some way, and which are entirely confabulated. This is particularly the case when others have their own agenda and may forcefully state their own version of what “must have happened” at a time when the individual is already struggling to remember events lost in an amnestic episode.

It is extremely distressing for any individual to have large pieces of their recollection missing, and there is a natural tendency for that individual to “fill the holes” in their memory. A further issue is that of whether Alice was so obviously impaired that Mr. Berry knew, or should have known, that she was impaired and incapable of giving consent. Where alcohol or other drugs are involved, evaluation of incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person’s decision-making ability; awareness of consequences; ability to make informed, rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person. However, individuals with alcohol consumption patterns like Alice’s - that

is, occasional consumption of large amounts of alcohol, gradually develop tolerance to the effects of alcohol, and it requires larger amounts of alcohol to achieve the desired state.

It is not uncommon for individuals who are functioning during amnestic episodes to appear normal, or near normal to casual observers, or even to trained medical personnel. It may require neurological evaluation of gait, including walking in tandem, standing on one leg, walking backwards, finger-to-nose or other testing to determine the level of impairment. This is not something that untrained lay observers are capable of doing. Alice described herself as “waking up” to being in the middle of sexual intercourse, having been entered from behind. This is highly unlikely, although individuals who “come out” of an amnestic period will remember the experience as awakening.

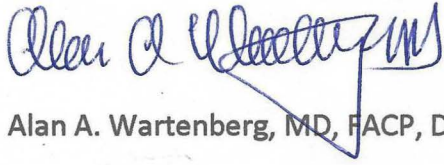
The act of positioning someone for intercourse, particularly in that position, and the stimulus of a penis entering a vagina would result in awakening in any person who was asleep, or even mildly intoxicated. By the morning, her blood alcohol concentration was likely much lower and possibly even at zero. No notation of slurred speech or gait problems was present in that morning, and Alice did not feel as intoxicated as she had been the previous night. Alice was describing the moment that her normal memory processes had returned and she was conscious of her environment, but it is highly unlikely that she was awakened from sleep in the middle of having intercourse.

The physiology of blackouts is not well understood. It appears that the memories are formed but may be stored in places that are not accessible to the individual when they are in their normal and sober state. Some patients may remember the prior events when they become intoxicated again, a process called “state dependent memory.” The use of sedatives may also allow access to these memories, and this is also reflected in the use of interviews under sodium amytal or other barbiturates or benzodiazepines, or under hypnosis. Some individuals may have spontaneous “return” of these memories, but individuals may also be highly suggestible to both internal and external accounts of the events and may “confabulate” or create false memories.

### **Opinions**

- 1) It is my opinion, to a reasonable degree of medical certainty that Alice was having an “en block” or total alcohol amnestic event following heavy drinking on the night of August 23-24.
- 2) It is my opinion, to a reasonable degree of medical certainty that Alice was not sleeping and did not “wake up” while having sexual intercourse with Mr. Berry, but rather that she emerged from her blackout, and was conscious and interacting with Mr. Berry prior to that moment.

Signed under pains and penalty of perjury this 4<sup>th</sup> day of January 2022.

A handwritten signature in blue ink, appearing to read "Alan A. Wartenberg", with a stylized flourish at the end.

Alan A. Wartenberg, MD, FACP, DFASAM

### References

Elliot M, Terret G, Curran HV et al. Prospective memory deficits following acute alcohol consumption. *J Psychopharmacol* 2021 35;1386-97.

Rose ME, Grant JE. Alcohol-induced blackout. Phenomenology, biological basis and gender differences. *J Addict Med* 2010 4:61-73

White AM, Signer ML, Kraus CL, Swartzweider HS. Experiential aspects of alcohol-induced blackouts among college students. *Am J Drug Alcohol Abuse* 2004; 30:547-50.

Voloshyna DM, Bonar EE, Cunningham RM et al. Blackouts among male and female youth seeking emergency department care. *Am J Drug Alcohol Abuse* 2018 44:129-39



**CITIZENSHIP:** United States

**ADDRESS:** 32 Trout Brook Lane  
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**EDUCATION:**

**UNDERGRADUATE:** New York University  
University College of Arts & Sciences  
Bronx, New York  
Major: German literature; Minor: Biology  
Bachelor of Arts (with honors), June 1967

**GRADUATE:** Medical College of Wisconsin (MCW)  
Milwaukee, Wisconsin  
  
Doctor of Medicine, May 1972

**POSTGRADUATE:** Harbor UCLA Medical Center  
Torrance, California  
Rotating Internship (Medicine), 1972-1973  
  
Milwaukee County Medical Complex  
Milwaukee, Wisconsin  
Residency in Internal Medicine, 1978-1980  
  
Career Teacher Fellowship in  
Alcohol/Substance Abuse, Medical College  
of Wisconsin, 1981-1983

**PROFESSIONAL LICENSES:** Doctor of Medicine, Commonwealth of  
Massachusetts June 1991-present  
  
State of Rhode Island Jan. 1984-June  
2012,  
January 2020 - present  
  
State of Wisconsin  
Physician and Surgeon, 1974-76, 1978-2009  
  
National Board of Medical Examiners  
Certification 1973  
  
American Board of Internal Medicine  
Certification 1980  
  
American Society of Addiction Medicine  
Certified by Examination- 1986, 1996.  
  
American Board of Addiction Medicine 2010  
  
Drug Enforcement Agency, 1973-76, 1978-  
2016,  
January 2020 - present, X waiver 2003-  
2016,  
April 2020 - present

**ACADEMIC APPOINTMENTS:**

2/2006- present	Affiliated Faculty Member, Brown University Center for Alcohol and Addiction Studies
2/1991 -6/2010	Assistant Professor of Medicine Tufts University, Boston MA
3/1988 - 2/1991	Assistant Professor of Medicine Brown University, Providence RI
2/1984 - 2/1991	Core Faculty Member, Brown University Center for Alcohol and Addiction Studies
2/1984 - 2/1988	Instructor in Medicine, Brown University
7/1981 - 2/1984	Assistant Professor of Medicine Medical College of Wisconsin
7/1980 - 6/1981	Clinical Instructor in Medicine Medical College of Wisconsin
7/1974 - 6/1975 Medicine	Clinical Instructor in Preventive Medical College of Wisconsin

**PROFESSIONAL EXPERIENCE:**

4/2015 - present consultation, teaching	Semi-retired, clinical and forensic
3/2020 - 11/2020 Attleboro, MA	Medical Director, HCRC Treatment Center,
9/2012-4/2015	Consulting Physician, SATP/OTP, Providence DVA Medical Center, Providence RI
2/2006-8/2012	Associate Medical Director, Opioid Treatment Program, Providence DVA Medical Center
5/2004-8/2012	Physician, Meadows Edge Recovery Center, North Kingston, RI
7/2004- 11/2008	Corporate Medical Director Discovery House Programs, Providence RI
2/1991- 7/2004	Medical Director, Discovery House-RI
2/1991 -8/2004	Medical Director, Addiction Recovery Program, Faulkner Hospital, Boston, MA
2/1995- 5/2003	Medical Director, Addiction Treatment Center - New England, Brighton MA

3/1989 - 6/2001 Medical Director, Center for Behavioral Health-RI, Johnston RI:

3/1989 - 2/1991 Medical Coordinator, Substance Abuse Treatment Center, Roger Williams Medical Center, Providence, RI

**PROFESSIONAL EXPERIENCE (CONT'D):**

2/1984 - 2/1989 Medical Coordinator, Addictions Treatment Center, VA Medical Center, Providence RI

7/1981 - 2/1984 Associate Attending Physician, Medicine, Milwaukee County Medical Complex, Milwaukee WI

7/1980 - 2/1984 Consulting Physician (Internal Medicine), DePaul Rehabilitation Hospital, Milwaukee, WI

7/1981 - 2/1984 Co-Director, Behavioral Medicine Unit, Milwaukee County Medical Complex, Milwaukee WI

7/1980 - 6/1981 Staff Physician - Internal Medicine Northpoint Medical Group, West Allis, WI

7/1978 - 6/1980 Resident in Medicine, Medical College of WI

6/1977 - 6/1978 Assistant Medical Director, DePaul Rehabilitation Hospital, Milwaukee WI

7/1973 - 7/1976 Private Practice, General Medicine, Brooklyn NY, Milwaukee WI

9/1976 - 11/1977 In treatment for Chemical Dependency, Wisconsin Family Therapeutic Community. Milwaukee WI

7/1967 - 8/1968 Caseworker, Department of Social Services, Brooklyn, NY

**HONORS AND AWARDS:**

Deans List, New York University, 1963-1965

Arnold Air Society, Billy Mitchell Squadron Honor Society, AFROTC, New York University 1966

Scabbard and Blade, National ROTC Honor Society New York University 1967

National German Honor Society, Delta Phi Alpha, 1967

Degree with Honors, in German, New York University, 1967

Pfizer Medical Scholarship, MCW, 1969-1970

National Medical Honor Society, MCW  
Alpha Omega Alpha, 1972

Upjohn Award for Outstanding Clinical  
Proficiency of the Senior Class, MCW. 1972

Special Advancement for Achievement  
Veterans Administration Medical Center, 1986

Best Teacher Award, Carney Hospital, 1996

Best Teacher Award, Tufts University School  
Of Medicine, 1997, 2002; Lifetime Teaching

Award 2005.

**HONORS (CONT'D) :**  
2006

Boston's Top Doctors, Boston Magazine, 2004-

Nyswander-Dole Award, American Association for  
the Treatment of Opioid Dependency, New York,  
NY 2009

RX for Excellence: Heroes of the Field Award,  
Massachusetts Medical Law Report, Boston MA,  
2009

**HOSPITAL&UNIVERSITY**  
**COMMITTEES:**

Conference of Boston Teaching Hospitals  
Substance Abuse Committee, 1991-1996  
Medical Executive Committee, 1992-1993

1998-1999; Committee on Physician Health,  
Residency Selection Committee, Pain  
Committee, Faulkner

Hospital, 1991- 2004

Human Research Review Committee, 1990-  
1991; AIDS Advisory Committee, 1989-1991  
Impaired Physicians Committee, 1990-1991; Roger  
Williams Hospital; Committee on Medical Student  
Impairment, Brown University; Vice-Chair, 1988-  
1999

Working Committee, Project ADEPT (Alcohol  
And Drug Education in Physician Training in  
Primary Care), Brown University Center for  
Alcohol and Addiction Studies,

1986-91

AIDS Module Development, 1989 - 1992.

**OTHER COMMITTEES &**  
**COMMUNITY SERVICE:**

Committee on Physician Health,  
Massachusetts Medical Society, 1992-1997

Marathon Inc., Therapeutic Communities for  
Treatment of Substance Abuse, Providence,  
RI; Board of Directors, 1984 - 1993; Vice-  
Chair, 1985-1986; Chairman, Board  
Directors, 1986 - 1991

of

Impaired Physicians Committee, 1984-1990;

Vice-Chairman, 1986 - 1990; AIDS  
Advisory Committee, 1987 - 1990;  
Rhode Island Medical Society

Advisory Committee, Training Program  
Center for AIDS & Substance Abuse Training  
NIDA, 1988 - 1989; Advisory Committee on  
Health, RI Project AIDS, 1986-1988

**OTHER APPOINTMENTS:**

1993 -  
Maintenance, 1997-

Alcohol

Editorial Board, Journal of Substance  
Abuse, 1987 - 1997; Substance Abuse,  
1983-85; 1994 - present; Editorial Review  
Board, Journal of the Addictions,  
present; Journal of

Present; Contributing Editor, Brown University  
DATA, 1986-1992; Reviewer, Drug and

Dependence 2014-present  
Editorial Review Board, Project CORK, 1987-8

**OTHER APPOINTMENTS:**  
**(CONT'D)**

1997-present.

Reviewer, JAMA, Journal of Clinical  
Epidemiology, American Journal of  
Medicine, 1989 - present; American  
Journal of Addictions, 1995-present;  
NEJM, 1997-present; Ann Intern Med

National Council on Alcoholism Medical Advisory  
Committee, 2007 - present; Fellow, American  
College of Physicians, 1989-present, Member,  
1983- 88, Associate 1978-1983; Medical Advisory  
Board, National Alliance of Methadone  
Advocates, 2019-present.

**SOCIETY MEMBERSHIPS:**

American Society of Addiction Medicine (ASAM)  
1981 - present; Director, Region III (New  
England), Member, Board of Directors, 1994-  
1997; Chair, Medical Specialties Section, 1995-  
1998; Director, Ruth Fox Course, 1995-1998;  
Publications Council 2011- present, Fellow  
1997-present.

Member, Massachusetts Chapter, American Society  
of Addiction Medicine, 2001 - present;  
President-Elect 2009-2011; CME Chairman 2009-  
2011; President, June 2011-June 2013, Immediate  
Past President June 2013-2015; Acting Chair,  
Education Committee; Chair, Membership  
Committee 2013-2015.

Association for Medical Education and Research  
in Substance Abuse (AMERSA), 1982-2001

Society of General Internal Medicine, 1981-2007

Massachusetts Medical Society 1991-present

American Medical Association, 1981-present

Rhode Island Medical Society, 1984-1991

American Academy of Addiction Psychiatry, 2006-present

**GRANTS:**

Wartenberg A. Career Teacher Grant in Chemical Dependency, National Institute on Drug Abuse, Faculty Development Grant for Curriculum Development in Substance Abuse, MCW 1981 - 1984; \$225,000.

Wartenberg A (PI), Nirenberg TD, Liepman MR. Cognitive changes after detoxification using clorazepate or chlordiazepoxide. Merit Review Grant, Central Office, 1985 - 1987, \$23,664.

Truitt EB, Liepman MR (PI's), Liebald RA, Wartenberg A, et al. Elevated acetaldehyde levels as a phenotype of alcoholism. NIAAA, 1986 - 1989, \$112,000.

**GRANTS (CONT'D)**

Wartenberg A, Jacobson G (PI'S), Spiro J, Mali BJ. Patterns of alcohol and drug abuse in medical students: Effects of case-finding and educational intervention, Supported by DePaul Rehabilitation Hospital, 1983-1988, \$25,000.

Co-Investigator, with Mayer K, Zierler S, Carpenter C (PI'S), New England Behavioral Health Study: Heterosexual transmission of HIV infection. NIH, 1987-1991, \$950,000.

Substance Abuse: A Course for Clinicians. AIDS Health Education Consortium(AHEC), \$2,000, 1989.

Gastfriend D, Weiss R (PIs), Wartenberg A et al. Northern New England Node -Clinical Trials Network, NIDA, 2002-2005, \$5,000,000

Data Safety Monitoring Board, Rich J (PI). Safety and efficacy of induction into medication-assisted treatment in incarcerated opioid dependent individuals prior to release with immediate referral to community-based treatment. Miriam Hospital, NIH grant, 2010-2016.

Steering Committee, Gastfriend D (PI), Bresani I (PM) Comparison of treatment with extended-release injectable naltrexone with

buprenorphine in multi-site community- based health care systems: an open-label trial. Alkermes grant, Public Health Management Group, 2017-2019.

J  
JOURNAL PUBLICATIONS:

Itskovitz HD, Wartenberg A. Combined phenylephrine and tranylcypromine for postural hypotension. **American Heart J.** **106**: 598-599, 1983.

Wartenberg A. Treatment of alcohol withdrawal syndrome (letter). **JAMA** **250**: 1271, 1983

Wartenberg A, Cyr M, Femino J. Innovations in medical student and resident education. **Substance Abuse** **7**: 24-27, 1986.

Liepman MR, Wartenberg AA, Nirenberg TD et al. Treatment of the Disulfiram-Ethanol reaction with aspirin: Report of a case. **Alcoholism: Clin Exp Res** **12**: 333, 1988 (abstract)

Wartenberg AA. Detoxification of the Chemically Dependent Patient. **RI Med J** **72**:451-456, 1989

Wartenberg AA, Nirenberg TD, Liepman MR et al  
Detoxification of alcoholics: Improving care by symptom triggered sedation. **Alcoholism: Clin Exp Res** **14**: 71-75, 1990.

Wartenberg AA. HIV and the Intravenous Drug User: Role of the Primary Care Physician. **J Gen Intern Med** 6(1) (Suppl): S35-S40, 1991.

Wartenberg AA, Nirenberg TD, Liepman MR, et al. Use of the revised Clinical Institute Withdrawal Assessment-Alcohol in an inpatient psychiatric unit: Effects on treatment of alcohol withdrawal syndrome. **Substance Abuse** 12: 36-41, 1991.

Stein MD, O'Sullivan PS, Ellis P, Perrin H, Wartenberg A. Utilization of medical services by drug abusers in detoxification. **J Subst Abuse** 5:187-194, 1993.

Wartenberg AA. Into whatever houses I enter: HIV and Injecting Drug Use (Editorial). **J Amer Med Assn** 271: 151-152, 1994.

Wartenberg AA. Substance Abuse and domestic violence (letter). **ACP Observer** 14: 4, December 1994.

Wartenberg AA. Psychoactive drugs and the Chemically Dependent patient with HIV. **AIDS Clinical Care** 6: 89-92, 1994.

Wartenberg AA. Alcohol abuse in the elderly (letter). **American Medical News**, November 27, 1995

Wartenberg AA. Alcohol withdrawal treatment practices (letter). **J Gen Intern Med** 11:315-316, 1996.

Wartenberg AA. Treatment Considerations in the Treatment of Opioid Dependent Patients. **Health and Medicine/Rhode Island** 82:91-94, 1999.

#### JOURNAL PUBLICATIONS: (Cont'd)

Wartenberg AA. Participation in Executions is Collusion with Judicial Murder (letter). **American Medical News**, September 4, 2000.

Wartenberg AA. Expert witnesses paid for time and experience (letter). **American Medical News**, July 22, 2002

Wartenberg AA. Medication has a sound place when treating addiction (letter). **American Medical News**, October 20, 2005

Wartenberg AA. Oath of Maimonides. **American Medical News**, 3/20/06

Wartenberg AA. Alcohol Use in Adults (letter). **N Engl J Med** 368:1654-6, 2013.

Schuman-Olivier Z, Connery H, Griffin ML, Wyatt SA, Wartenberg AA et al.



Clinician beliefs and attitudes about  
buprenorphine/naloxone diversion.  
**Amer J Addictions 22:574-80, 2013.**

**OTHER PUBLICATIONS:**

Wartenberg A. The Opiates and Opiate Abuse, in R.H. Herrington, G. Jacobson, D. Benzer (eds), **Alcohol and Drug Abuse Handbook**, Warren Green Co., St. Louis, 1987, pp. 19-53

Wartenberg A, Liepman MR. Medical Consequences of Addictive Behaviors, in T.D. Nirenberg, S.A. Maisto (eds); **The Assessment and Treatment of Addictive Behaviors**, ABLEX Publishing Co., Norwood NJ, 1987, pp.49-85.

Liepman MR, Nirenberg TD, Porges R, Wartenberg A. Depression Associated with Substance Abuse, in O.G. Cameron (ed). **Presentations of Depression**, John Wiley & Sons, New York, 1988, pp.131-167.

Wartenberg AA. AIDS patients are innocent, not guilty. **American Medical News**, December 9, 1988 (letter).

Wartenberg A. Clinical Toxicology and Substance Abuse, in M. Kochar, K. Kutty (eds), **Concise Textbook of Medicine 2nd Ed**, Elsevier Publishing Co., 1989, pp. 135-160.

Wartenberg, AA. Drunks and Junkies and the War on Drugs (first person). **American Medical News**. August 24/31, 1990

Wartenberg A, Liepman M. Medical Complications of Substance Abuse, in Lerner WD, Barr W (eds.), **Hospital Based Treatment of Substance Abuse**, Pergamon Press, New York, 1990, pp49-68.

Wartenberg A, Goldstein M. Health Professional Impairment, in Lewis DC, Dube C, Goldstein M (eds). **Brown University Project ADEPT Modules on Substance Abuse Education, V. II**, 1990.

**OTHER PUBLICATIONS (cont'd):**

Wartenberg A. Case Management Problems: Alcohol Withdrawal Syndrome; Physician Impairment; Opioid Withdrawal Syndrome, in Lewis DC, Dube C, Goldstein M (eds), **Brown University Project ADEPT Modules on Substance Abuse Education, V. II**, 1990.

Wartenberg A, Wolfson M. AIDS and Substance Abuse: Overview, in Lewis DC, Dube C, Goldstein M (eds), **Brown University Project ADEPT Modules on Substance Abuse Education, V. III**, 1991.

Wartenberg AA. The Drug-Using Patient, in Libman H, Witzburg RA (eds), **Clinical Manual for Care of the Adult**

**Patient with HIV Infection: Supplement**, ADLB Publications, Sherborn MA, 1991, pp 85-94.

Wartenberg AA. The Drug-Using Patient, in Libman H, Witzburg RA (eds), **HIV Infection: A Clinical Manual (Ed 2)**. Little, Brown; Boston, 1993, pp. 455-466.

Wartenberg AA. Drug-Drug Interactions in Pharmacological therapies. In Miller NS (ed). **Therapies for Drug & Alcohol Addictions**. Marcel Dekker, New York, 1994, pp. 101-126.

Wartenberg AA. Medical Complications of Addiction. Section V. Chapter 1: General Approach to the Patient. Chapter 2: Medical Syndromes Associated with Specific Drugs. Chapter 3: Management of Common Medical Problems. Chapter 4: TB, HIV and other Medical Co-Morbidities. In Miller NS. (ed), **Principles of Addiction Medicine**. American Society of Addiction Medicine, Washington D.C., 1994.

Wartenberg AA, Nirenberg TD. Alcohol and Drug Abuse in the Older Patient. In Reichel W. (ed). **Care of the Elderly: Clinical Aspects of Aging, ed 4**. Williams and Wilkins, Baltimore, 1995. pp. 133-141.

Wartenberg AA, Samet JH. The Drug-Using Patient. In Libman H, Witzburg RA (eds). **HIV Infection: A Primary Care Manual, Ed 3**. Little, Brown. Boston, 1996. pp. 595-609.

Kasser C, Geller A, Howell E, Wartenberg A. Detoxification: Principles and Protocols. In Graham A, Schultz T (eds), **Principles of Addiction Medicine, Principles Update Series: Topics in Addiction Medicine, V1, N. 2**. American Society of Addiction Medicine, Chevy Chase, MD. pp. 1-51, 1997.

Wartenberg AA. Medical Complications of Addiction, Chapter 9, Medical Syndromes Associated with Specific Drugs, Chapter 10. In Graham A, Shultz T et al (eds.) **Principles of Addiction Medicine, Ed 2**. American Society of Addiction Medicine, Chevy Chase, MD., 1998.

Wartenberg AA. Editorial Advisor, Medical Section, **Principles of Addiction Medicine, Ed 3**. Graham A, Mayo-Smith M, Shultz T, eds. American Society of Addiction Medicine, Chevy Chase, MD. 2003.

**OTHER PUBLICATIONS (cont'd):**

Galanter J, Wartenberg A. Pharmacology of Chemical Dependency and Addiction. In DE Golan, AH Tashjian et al. (eds) **Principles of Pharmacology: The Pathophysiological Basis of Drug Therapy**, Lippincott Williams & Wilkins, Philadelphia PA, pp. 247-262, 2006.

Wartenberg AA. Opioid treatment models around the globe.

**ASAMagazine**

January 16, 2013. Accessed at:

<http://www.asam.org/magazine/read/article/2013/01/26/opioid-treatment-models-around-the-globe>

Wartenberg AA. Why do so many in our field resist alternative forms of treatment? (Op/Ed). **ASAMagazine**, April 12, 2013. Accessed at:

<http://www.asam.org/magazine/read/article/2013/04/12/why-do-so-many-in-our-field-resist-alternative-forms-of-treatment->

Wartenberg AA. Management of Alcohol Intoxication and Withdrawal. In **The ASAM Principles of Addiction Medicine, Ed 5**, R. Ries, D. Fiellin, S Miller, R Saitz (eds). Wolters Kluwer, Philadelphia PA, 2014. pp. 635-651.

Wartenberg AA. Management of Alcohol Intoxication and Withdrawal, In **The ASAM Essentials of Addiction Medicine, Ed 2**. AJ Herron, TK Brennan (eds). Wolters Kluwer, Philadelphia PA, 2015, pp. 256-261.

Wartenberg A. The Interface of Pain Management and Chemical Dependency. In **Principles and Practice of Pain Medicine, Ed 3**. ZH Bajwa, RJ Wooten, CA Warfield (eds). McGraw Hill, New York, 2016, pp. 627-638.

Wartenberg AA. Recognition and treatment of early-life trauma associated with Substance Use Disorders: missed opportunities, lost lives. Addiction Medicine Updates. National Council on Alcoholism and Drug Dependence (NCADD), April 27, 2018 Accessed at:

<https://www.ncadd.org/blogs/addiction-update/untreated-early-life-trauma-missed-opportunities-lost-lives>

Wartenberg AA. Providing Integrated Care for Pain and Addiction, in:

**The American Society of Addiction Medicine Handbook on Pain and Addiction**, I. Roback, H Malinoff, M. Pohl et al, eds, Chapter 5. Oxford University Press, New York, NY, 2018, pp. 47-58.

Wartenberg A. "Prescribing" mutual help groups: A Primer. Addiction

Medicine Updates. NCADD, July 2, 2018. Accessed at:

<https://www.ncadd.org/blogs/addiction-update/prescribing-mutual-help-meetings-a-primer>

Wartenberg A. Finding your place in mutual help groups. Addiction

Medicine Updates. NCADD, September 9, 2018, accessed at:

<https://www.ncadd.org/blogs/finding-your-place-in-mutual-help-groups>

**OTHER PUBLICATIONS (cont'd):**

Wartenberg AA. Management of Alcohol Intoxication and Withdrawal, in **The ASAM Principles of Addiction Medicine, Ed. 6**, SC Miller, DA Fiellin, RN Rosenthal, R. Saitz (eds), Wolters Kluwer, Philadelphia PA, 2019, pp. 704-722.

Sadacharan R. Wartenberg AA. Management of Alcohol Intoxication and Withdrawal, In: **The ASAM Essentials of Addiction Medicine, Ed 3**. Herron, TK Brennan (eds). Wolters Kluwer, Philadelphia PA, 2019, pp. 290-297.

**TEACHING ROLES:**

Volunteer Faculty, Addiction Medicine Fellowship and First Year Resident Rotation in Preventive Medicine on Addiction Topics, Department of Medicine, Rhode Island Hospital and Brown University Warren Alpert School of Medicine, January 2019 - present

Volunteer Faculty, Buprenorphine Waiver Course, Brown University Warren Alpert School of Medicine, Division of Family Medicine, Memorial Hospital, January 2018.

Core Faculty Member, Brown University Center for Alcohol and Addiction Studies, 1984-1992; Affiliated Faculty Member 2006-present

Visiting Attending Physician, Medical Teaching Service, Faulkner Hospital, Boston MA, 1991 - 2005

Co-Director, Addiction Medicine, Pharmacology Section, Tufts University, 1995-2004

Director, Addiction Medicine Education Didactic Series, Faulkner Hospital Psychiatry Residents, Longwood Psychiatry Program, 2001-2004

Lecturer, Addiction Medicine, Pharmacology Section, Tufts University School of Medicine 1991-2005

Director, Addiction Medicine Clerkship, Tufts University School of Medicine, Faulkner Hospital; 2004-2005

Lecturer, Addiction Medicine, Northeastern University Physician Assistant Program, Boston MA; 1994-2006

Consultant, Addiction Medicine, Bi-monthly Consultation Program, Deaconess Waltham Hospital, Waltham MA., 1998-2002

Lecturer, Addiction Medicine Section, Carney Hospital Internal Medicine Residency, Boston MA., 1993- 2005

Lecturer, Addiction Topics, Massachusetts General Hospital Primary Care Internal Medicine Program, 1999 - 2005.

Attending Physician, Medical Teaching Service, Roger Williams General Hospital, 1989 - 1991; Medical Ward Service, VAMC, 1984-1988.

Monthly Lecture Series on Substance Abuse and Clinical Pharmacology, VAMC, Providence RI, 1984 - 1988.

Course Coordinator and Lecturer, Community Health Clerkship, Section on Alcohol and Other Drug Abuse, Brown University, 1984 - 1991.

Lecturer, Biomed 390B, Alcohol and Substance Abuse selective, 1984 -1985; Selective Coordinator and Lecturer, Brown University, 1986 - 1991.

Preceptor, Junior Clerkship in Medicine, Brown University, 1984 - 1991.

**TEACHING ROLES (cont'd):**

Lecturer, Department of Psychiatry, Symposium Series on Alcohol and Other Drug Abuse, Butler Hospital, 1984 - 1985.

Lecturer, Alcohol, Health and Culture - Anthropology 135, Brown University., 1984-87.

Preceptor, Biomed 390A, Introduction to Clinical Medicine, Brown University, 1986 - 1991; Lecturer, Effects of Alcohol on Nutrition, Clinical Nutrition - Biomed 80, Brown University, 1987 - 1990

Guest Lecturer, University of Massachusetts Medical School. Worcester MA. Substance Abuse, 1985 - 1993.

Guest Lecturer, Rhode Island College, Introduction to Human Services; Alcohol and Other Drug Abuse; School of Social Work, 1986-1992.

Guest Lecturer, Harvard Medical School, Boston MA, Department of Pharmacology, Chemical Dependency Segment, 1987 - 2002.

Guest Lecturer, Boston University School of Social Work, Cocaine and Opiate Abuse, 1994 - 2001

Faculty, Post-doctoral Training Program on Intervention and Treatment Research, supported by NIAAA grant, Lewis D and Longabaugh R, program directors, 1987 - 1991. (Lectures, Seminars and colloquia on clinical and research issues); 1987-91.

Supervisor, Post-doctoral MD fellows in Clinical Research, 1987-91; Core Faculty, Brown University Center for Alcohol and Addiction Studies Institute for Faculty Development, 1988 - 1991.

Career Teacher, Medical College of Wisconsin, Director of Training of Medical Student and Resident Education on Substance Abuse, 1981-1984.

Attending Physician, Internal Medicine Service, St. Luke's Hospital, Milwaukee, Wisconsin, 1980-1982.

Attending Physician, Internal Medicine Service, St. Mary's Hospital, Milwaukee, Wisconsin, 1980-1982.

**INVITED PRESENTATIONS:**

Recognition and management of alcohol and other drug abstinence syndromes. Department of Medicine Grand Rounds, Milwaukee County Medical Complex (MCMC), November 1978; Medical Grand Rounds, VAMC, Wood, Wisconsin, December 1979.

Emergency health care of the alcoholic: A symposium for health professionals in Substance Abuse, DePaul Rehabilitation Hospital, Milwaukee, Wisconsin, December 1978.

Management of overdose. Presented as part of a symposium for the Institute of Trauma and Emergency Medicine, MCMC, February 1979.

Controversies in the management of drug overdose. Department of Medicine Grand Rounds, Milwaukee County Medical Center, September 1979.

The Impaired Physician. Medical Grand Rounds, St. Luke's Hospital, Milwaukee, Wisconsin, August 1981.

Neuropharmacology of clonidine: Therapeutic implications. Department of Medicine Grand Rounds, University of Wisconsin Hospitals, Madison Wisconsin, February 1982.

The Therapeutic Community: Patient selection and treatment outcomes. Presented as a workshop at the World Health Organisation-AMERSA Conference on International Aspects of Substance Abuse, Berkeley California, August 1982.

Treatment of tricyclic antidepressant overdose. Department of Medicine Grand Rounds, MCMC, January 1983.

The use of clonidine and lofexidine in withdrawal syndromes. Department of Medicine Grand Rounds, St. Vincent's Hospital, Rockford Illinois (University of Illinois), August 1983.

Alcoholism in the surgical patient: Recognition and management. Department of Surgery Grand Rounds, MCMC, October 1983.

Medical implications of "recreational" drug use. Department of Medicine Grand Rounds, Mt. Sinai Hospital (University of Wisconsin), Milwaukee Wisconsin, December 1983.

Management of the hospitalized alcoholic and drug user. Medical Grand Rounds, Veterans Administration Medical Center (VAMC), Providence, RI, July 1984.

The Impaired Physician: Implications for residents (with H. Rakantanski), Department of Medicine Grand Rounds, Miriam Hospital, Providence RI, March 1985.

Medical Education in Substance Abuse: A model program and recent innovations (with Cyr M, Femino J), presented at the Annual AMERSA Meeting on "Alcohol, Drugs and the Primary Care Physician: Issues, Roles and Responsibilities," Annenberg Center for the Health Sciences, Palm Springs California, November 1985.

**INVITED PRESENTATIONS (CONT'D) :**

The Impaired Trainee: Stress, Psychiatric Illness and Substance Abuse. (With Reuben D and Goldstein M), Combined Grand Rounds (Medicine, Surgery, Psychiatry), Rhode Island Hospital, March 1986.

Substance Abuse and the Physician Assistant. Presented at National Meeting of the American Academy of Physician Assistants, Cincinnati Ohio, May 1987.

Chemical Dependency and the Medical Student. Presented as Keynote Address, National Meeting of the Student Section, American Medical Association, Chicago Illinois, June 1987.

Chemical Dependency issues and the impaired physician. Internal Medicine Teaching Rounds, Rhode Island Hospital, March 1988.

Recognition and management of withdrawal syndromes. Internal Medicine Noon Conference, Memorial Hospital, Pawtucket RI, April 1988, November 1988.

Alcohol Abuse/Drug Abuse. Brown University Learning Community, May 1988-9

Clinical pharmacology of psychoactive medications. Medical Grand Rounds, VAMC, Providence RI, September 1988.

Moderator, Tele-conference on "Use and Abuse of Benzodiazepines," DuPont R, VAMC, Providence RI, October 1988.

Moderator, Showcase Presentations on Medical Education in Substance Abuse, AMERSA National Meeting, Rockville MD, Nov.1988.

Small Group Discussion Facilitator (with Swift R), AIDS and Substance Abuse, AMERSA National Meeting, Rockville MD, Nov. 1988.

Poster Session Coordinator, Third Annual Conference on AIDS and Substance Abuse (AMSAODD); Poster Presentation: Passage of an AIDS Bill: Medicine, Politics and Media, Third Annual Conference on AIDS and Substance Abuse, Miami Florida, February 1989.



Co-director (with Lewis DC -Director), Workshop on Chemical Dependency, American College of Physicians, 70th Annual Session, San Francisco CA, April 1989.

Small Group Facilitator; Project ADEPT Faculty Development Workshop On Substance Abuse Education Modules, Brown University, April 1989.

Pathophysiology of Abstinence Syndromes. Combined GI Basic Science Series, Rhode Island Hospital, April 1989.

Risks of HIV Testing in Hospitalized Chemical Dependency Patients. Presented at Brown University AIDS Program (BRUNAP), May 1989.

Management of the Hospitalized Alcoholic. Noon Medical Conference, Roger Williams General Hospital (RWGH), Providence RI, May 1989.

Treatment of Cocaine dependency. Staff In-service Program, Center for Behavioral Health, Johnston RI, June 1989.

**INVITED PRESENTATIONS (CONT'D) :**

Physician Prescribing of Psychoactive Drugs. Internal Medicine Teaching Conference, Rhode Island Hospital, June 1989, January 1990, February 1991

Advances in the Diagnosis and Treatment of Patients with Chemical Dependency, Department of Medicine Grand Rounds, Roger Williams General Hospital (with Lewis DC, DePetrillo P), July 1989.

Reviewer, Preventing HIV Infection in Patients in Chemical Dependency Programs, Center for AIDS and Substance Abuse Training and the Office of Drug and Alcohol Abuse Prevention, State of Maine, Portland Maine, August 1989.

Assessing and Counseling Patients with Drug Use Problems in Relation to the HIV Epidemic, Primary Provider AIDS Education Program for Residents, BRUNAP, Providence RI, August 1989.

HIV Antibody Testing: Who to test, Counseling Issues and Behavioral change: Role of the Physician. Department of Medicine Noon Conference, RWGH, Providence RI, August 1989.

The Current Scene of Designer Drugs: Highs by Gucci. Brown University Learning Community, Providence RI, September 1989.

Assessing and Counseling the HIV Positive Patient with Substance Abuse, BRUNAP AIDS Education Series for Primary Care Providers, Brown University Providence RI, September 1989, November 1989.

Care of the Chemically Dependent Patient on the Surgical Service. Department of Surgery Grand Rounds, Rhode Island Hospital, October 1989.

Member, Program Committee; Moderator, Videotape Presentations. AMERSA National Meeting, Rockville MD, November 1989

Measuring Attitudes of Health Professionals towards Substance Abuse: Reworking the Factor Structure of the SAAS (Liepman MR, Dube C, Zwick W, Wartenberg AA, Goldstein M), Scientific Paper. AMERSA National Meeting, Rockville MD, November 1989.

Introduction of the CIWA-A to a Psychiatric Ward: Staff Acceptance and Impact on Clinical Care (Wartenberg AA, Nirenberg TD, Liepman MR et al.), Scientific Paper Presentation, AMERSA National Meeting, Rockville MD, November 1989.

Patient Perception of Effects of a Positive HIV Test: Risks of Drug Use, Treatment Drop-out, Depression and Suicide (Wartenberg AA, Swift R), Scientific Paper Presentation, AMERSA National Meeting, Rockville MD, November 1989.

Program Chairman, Region III Meeting, American Society of Addiction Medicine. Presenter: Introduction of the CIWA-A to a Psychiatric Ward; Patients Perceptions of Effects of a positive HIV test, Providence RI, November, 1989.

Organization of a Chemical Dependency Unit in a Community Hospital. (With Nirenberg TD). Mansfield General Hospital, OH, November 1989.

Opioid Detoxification Strategies. Resident Conference, Department of Medicine, Rhode Island Hospital, November 1989.

**INVITED PRESENTATIONS (CONT'D):**

Discussant, Medical Grand Rounds, Treatment of Delirium Tremens, Rhode Island Hospital, November 1989.

Nursing Issues in the Chemically Dependent Patient. Nursing Inservice Program. RWGH, Providence RI, January 1990.

Newer Techniques in Opiate Detoxification. Staff Inservice Program, Junction Treatment Center, Providence RI, January 1990.

Hepatitis in the Intravenous Drug User. Staff Inservice Program, Center for Behavioral Health, Johnston RI, January 1990.

Management of Behavioral Issues in the Chemically Dependent Patient- How Not to be Driven to Drink. Medical Grand Rounds. South County Hospital, Narragansett RI, February 1990.

Alcoholism and the General Internist (with L. Gottlieb), Northeast Regional Meeting of SGIM, UCONN. Farmington CT, February 1990.

Recognition and Management of Prescription Drug Abuse. 12th Annual Hoosic Serunian Primary Care Symposium: Detection and Management of Alcohol and Drug Abuse in the Primary Care Setting, Central Massachusetts Medical Center, Worcester MA, February 1990.

Program Chairman and Organizer, AIDS and Substance Abuse: A Course for Health Professionals. Presenter: Introduction;

Patient Evaluation; General Health Care Issues. Warwick RI, March 1990.

Small Group Facilitator, AIDS and Substance Abuse: A Faculty Development Course. Presenter: Treatment of the Hospitalized Patient with Opiate and Cocaine Addiction. New Haven CT, March 1990.

Management of the Patient with Overdose. Noon Medical Residents Conference, Roger Williams General Hospital, April 1990.

What's New and What's Old in Detoxification; Faculty Development Program, University of Massachusetts Medical Center Faculty Fellow Program in Substance Abuse, Worcester MA, May 1990.

Recognition & Management of IV Drug Users in Primary Care Practice (with D. Shine). Pre-course, Incorporating HIV Disease in Primary Care Practice, National Meeting, Society for General Internal Medicine, Washington DC, May 1990.

The Chemical Dependency Consultation-Liaison Team: Role in the General Hospital. Medical Grand Rounds, Mid-Maine Medical Center, Waterville ME, May 1990.

Use of Monitoring Instruments in the Treatment of Withdrawal Syndromes. Medical Grand Rounds, Exeter Hospital, NH, June 1990.

Medical Care of the Intravenous Drug Abuser with HIV Disease; Project ADEPT Faculty Workshop, Providence RI, June 1990.

**INVITED PRESENTATIONS (CONT'D):**

Outpatient Detoxification of the IVDU, HIV Clinic, Department of Medicine, Noon Conference, Boston City Hospital, June 1990.

Treatment of Pain and Anxiety in the HIV Positive IVDU. Faculty Development Workshop on AIDS and Substance Abuse, Harvard Medical School, Boston MA, June 1990.

Chlordiazepoxide v. Clorazepate for Treatment of Alcohol Withdrawal Syndrome: Effects on Cognitive Function. Poster Presentation, RSA, Toronto Canada, June 1990.

AIDS: The Substance Abuse Connection. Medical Grand Rounds, Roger Williams Medical Center, July 1990.

Disinhibition and hypersexuality: Risks of Non-Intravenous Drug Use on Acquisition and Transmission of HIV Disease. Medical Grand Rounds, Mt. Sinai Hospital, Milwaukee WI, July 1990.

Medical and Psychosocial treatment of the Hospitalized IVDU with HIV Disease. Northeast AIDS Education and Treatment Center, Lake Waramaug CT, September 1990; New Haven CT, June 1991.

Management of Alcoholism in the Hospital Setting. Psychiatry and Medicine Grand Rounds, Medical Center of Central Massachusetts-Memorial Hospital, November 1990.

Member, Program Committee. Moderator, Plenary Session: AIDS and Substance Abuse; Moderator, Scientific Session, Advances in Medical Education. AMERSA National Meeting, Bethesda MD, November 1990.

Chlordiazepoxide vs. Clorazepate in the Treatment of Alcohol Withdrawal Syndrome: Effects on Cognitive Function. Scientific Paper, AMERSA National Meeting, Bethesda MD, November 1990; ASAM Region III Meeting, Worcester MA, December 1990.

Keynote Address, Annual Meeting of the Faulkner Hospital and Corporation, Boston MA, November 1990.

AIDS and Substance Abuse: Advances in Educational Techniques. Workshop (with Lewis DC, Dube C). Third National Meeting on AIDS and Substance Abuse, American Society of Addiction Medicine, San Francisco CA, February 1991.

Management of the Patient with HIV Disease and Substance Abuse in the Medical Setting. Primary Care Grand Rounds, Beth Israel Hospital, Boston MA, March 1991.

AIDS and Chemical Dependency, Area Health and Education Center Teleconference, with Timothy Johnston MD, Margaret Bean-Bayog MD, Boston MA, March 1991

Treatment of Alcohol Withdrawal Syndrome, Medical House Staff Conference, Faulkner Hospital, Boston MA, April 1991.

#### **INVITED PRESENTATIONS (CONT'D) :**

Advances in the Treatment of Chemical Dependency. Medical Grand Rounds, Faulkner Hospital, May 1991.

Treatment of the Chemically Dependent Patient in the Nursing Setting. Nursing Grand Rounds, Faulkner Hospital, May 1991. Emergency Management of Drug Withdrawal Syndromes, Medical House Staff Conference, Faulkner Hospital, July 1991.

Treatment of Chemical Dependency in the Dual Diagnosis Setting. Psychiatry Conference, Harvard Community Health Plan, Boston MA, August 1991.

Recognition and Management of the Chemically Dependent Patient, Grand Rounds, St. Mary's Hospital, Waterbury CT, September 1991.

Management of the Injecting Drug User with HIV Disease. Conference on Primary Care and HIV, New England AIDS Education and Training Center, Worcester MA, September 1991.

Treatment of Cocaine Dependency. Psychiatry House Staff Conference, U Mass. Medical Center, Worcester MA October 1991.

Management of Opiate Dependent Patients in the Medical Setting, Medical House Officer Conference, Faulkner Hospital, October 1991.

The Treatment of Pain, Anxiety and Depression in the Chemically Dependent Patient with HIV Disease, House Officer Conference, Shattuck Hospital AIDS Program, Boston MA, October 1991.

Newer Methods of Alcohol Detoxification. Spaulding Hospital Conference on Chemical Dependency, Cambridge MA, October 1991.

Chemical Dependency, HIV Disease and the Primary Caregiver, Workshop, Harvard Community Health Plan Conference on HIV and Primary Care, Waltham MA, November 1991.

Ambulatory Management of Patients with HIV Disease and Chemical Dependency, Beth Israel Hospital, Ambulatory Medicine Series, September - December 1991.

"All dressed up but no place to go", Treatment Criteria in Addiction Medicine: The challenge to provide cost-effective care. Faulkner Hospital Fall Addiction Conference, Boston MA, November 1991.

Self-Perceived Risks of HIV Antibody Testing in Injecting Drug Users, American Society of Addiction Medicine Region III Annual Meeting, Cambridge MA, December 1991.

Treatment of Pain in the Post-Operative Chemically Dependent Patient, Surgical Grand Rounds, Faulkner Hospital, January 1992.

Professional Impairment: Implications for Medical Students, Brown University Medical School, Community Health Elective, Providence, RI, February 1992.

Recognition and Management of Chemical Dependency in the Community Health Setting, Neponset Health Center, Boston MA, March 1992.

**INVITED PRESENTATIONS (CONT'D):**

Principles of Methadone Maintenance and Detoxification, Center for Behavioral Health, Johnston RI, April 1992.

Cocaine and Alcohol Abuse in Patients on Methadone Maintenance, Center for Behavioral Health, Johnston RI, April 1992.

Chemical Dependency in the Workplace. Management Grand Rounds, Faulkner Hospital, April 1992.

Outpatient Management of Pain, Anxiety and Depression in the HIV affected patient with Chemical Dependency, Cape Cod Hospital, Hyannis MA, April 1992.

Presenter, HIV Disease and the Injecting Drug User. Workshop; HIV and the Primary Care Provider. Pre-course, Society of General Internal Medicine Annual Meeting, Washington DC, May 1992.

Home-based Nursing Management of the Chemically Dependent HIV positive Patient. Boston Visiting Nurse Association, May 1992.

Treatment of Alcohol Withdrawal Syndrome, Psychiatry Grand Rounds, Newton-Wellesley Hospital, Newton MA, May 1992.

Pharmacotherapy of Cocaine and Opiate Abuse. AIDS and Substance Abuse Course, New England AIDS ETC, Charlestown RI, June 1992.

Recognition and Management of Chemical Dependency in the Community Health Setting, Dorchester House, Dorchester MA, June 1992.

Medical Evaluation of the Patient Entering Methadone Maintenance and Detoxification Programs. South Providence Addiction Center, Providence RI. July 1992.

Recent Development in the Treatment of Alcohol and Other Drug Withdrawal. Medical Grand Rounds, Newton-Wellesley Hospital, Newton MA, August 1992.

Teaching and Integrating Substance Abuse Curricula with Patient Care (with B. Bush). Workshop, Substance Abuse Educational Conference, Substance Abuse Advisory Council of the Conference Of Boston Teaching Hospitals, Boston MA, April 1993.

HIV Disease and Substance Abuse: The Twin Epidemics. Keynote Address, Office of Treatment Improvement Cross-Training Conference, Boston MA, April 1993.

The Impaired Health Professional. Bay State Medical Center Conference on Substance Abuse Education. Springfield MA, May 1993

The Interface between Managed Care and Addiction Treatment. (With W. Burke). Workshop, American Society of Addiction Medicine Annual Meeting, Los Angeles CA, May 1993.

Topics in Addiction Medicine: Alcohol, Sedative-Hypnotic and Opioid Abuse. Medical Grand Rounds, Newton-Wellesley Hospital, Newton MA July 7, 14, 21, 1993.

#### **INVITED PRESENTATIONS (CONT'D) :**

Management of Chemically Dependent Patients. Carney Hospital, Boston MA. Medical Teaching Conferences (4), August, 1993

The Changing Face of Mutual Help. Role of the Primary Care Provider: Faulkner Hospital Fall Addictions Conference, November 1993.

Management of Injection Drug Users. Alcoholism and Drug Addiction in the Practice of Clinical Medicine. Harvard Medical School, October, 1993.

HIV and Substance Abuse. New England AIDS ETC Training Course, Boston MA, February 1994.

Management of Chemically Dependent Patients in the Hospital and Office Setting, Medical Teaching Conferences (6), Carney Hospital, Boston, MA, February-September 1994.

Physician-Clinician Interactions in the Treatment of Substance Abusers. Workshop. Focus Counseling Services, Inc. Cambridge MA, October 1994.

Management of Injection Drug Users; Panel Discussion, Dual Diagnosis Issues. Alcoholism and Drug Addiction in the Practice of Clinical Medicine. Harvard Medical School, October, 1994.

Use of Carbamazepine and Valproic Acid in the Treatment of Sedative Withdrawal. Massachusetts Psychiatric Society on Alcohol and Other Addictions, Cambridge MA, December 1994.

Psychotropic Medication in the Chemically Dependent Patient with HIV Disease. Grand Rounds, Division of Chemical Dependency, Beth Israel Medical Center, New York, January 1995

Injection Drug Users and HIV: Treatment Concerns. Boston Monthly HIV Medical Update. Panel Discussion. John Hancock Center, February 1995.

Naltrexone in the Treatment of Chemical Dependency: SMART Recovery Training Meeting, Cambridge MA, February 1995; Grand Rounds, Leonard Morse Hospital, Natick MA, March 1995; Psychiatry Grand Rounds, Carney Hospital, Dorchester MA, April 1995; Hilton Hotel, Hyannis MA, June 1995; Cambridge Marriott, August 1995.

Management of the Hospitalized Patient with Chemical Dependency: Medical Grand Rounds, Faulkner Hospital, Boston MA, June 1995.

Advances in the Treatment of Chemical Dependency, Department of Psychiatry Conference, Strong Hospital, Rochester NY, July 1995.

Case Management in Chemical Dependency: If it is the answer, what is the question? New England Society of Case Managers, Framingham, MA, August 1995.

Use of Newer Agents in the Management of Withdrawal Syndromes. American Society of Addiction Medicine Regional Meeting, Cincinnati OH, September 1995.

#### **INVITED PRESENTATIONS (CONT'D):**

Management of Abstinence Syndromes. Management of Patients with Addiction. Panel Discussion: Dual Diagnosis: role of the non-Psychiatric Addictionist. Harvard Medical School, Boston MA. October 1995.

Keynote Address. Alcohol Dependence: Current Treatment and Scope of the Problem. Regional Meeting, American Society of Addiction Medicine, Waterbury CT, October 1995.

Issues of HIV Counseling and Testing. HIV and Substance Abuse: The Twin Epidemics. Faulkner Hospital, Boston MA. November 1995.

Buprenorphine in the Treatment of Opiate Withdrawal Syndromes.  
Mercy Hospital Medical Staff Meeting, Portland ME. December 1995.

The role of Methadone Detoxification and Maintenance in the  
Continuum of Care for Chemically Dependent Patients. Stanley  
Street Treatment Resources, Fall River, MA, January 1996.

Treatment of Alcohol Withdrawal Syndrome. Medical Conference.  
New England Medical Center, Boston MA, February 1996.

Benzodiazepine Prescribing in an Outpatient Practice: Precautions  
and Pitfalls. Boston Evening Medical Center Staff Conference,  
Boston MA, February 1996.

Advances in the Psychopharmacology of Addictive Disorders.  
Harvard Community Health Plan, Psychiatry Staff Conference,  
Chelmsford MA, March 1996.

Management of the Hospitalized Opioid-Dependent Patient. Medical  
Grand Rounds, Carney Hospital, Boston MA, March 1996.

How to keep kids off drugs: Parents make the difference.  
Cumberland Substance Abuse Prevention Task Force, Cumberland RI,  
March 1996.

Buprenorphine in the treatment of opioid dependence. Maine ASAM  
State Meeting, Augusta Maine, April 1996.

HIV and Substance Abuse: Management of Pain and Anxiety.  
Psychiatry/Social Work Conference, Carney Hospital, Boston MA,  
May 1996.

Recognition and Management of the chemically dependent patient in  
the hospital setting. OB-GYN/Primary Care Grand Rounds; Medical  
Grand Rounds, Johnson City MC, Binghamton NY, May 1996.

Advances in the Psychopharmacology of Addiction Treatment.  
Medical Grand Rounds, Faulkner Hospital, Boston MA, June 1996

Keynote Address: Alcoholism: Is there a cure? Is there a disease?  
Annual Meeting, CASA (Community Alliance Serving Alcoholics),  
University of Massachusetts-Boston, June 1996.

Medical Co-Morbidities of Alcohol Dependence. Review Course,  
Certification Examination. American Society of Addiction  
Medicine, Chicago IL. October 1996.

#### **INVITED PRESENTATIONS (CONT'D) :**

New pharmacotherapies for opioid dependence. Region III Meeting,  
American Society of Addiction Medicine. Northampton MA. November  
1996.



Panel Discussion, Chemical Dependency and Adolescents, Ruth Fox Review Course, American Society of Addiction Medicine, San Diego, CA., April 1997.

Grand Rounds, Addiction and the Rehabilitation Patient: Problems and Strategies. Braintree Rehabilitation Hospital, Braintree MA, June 1997

Advances in Opioid Detoxification/Maintenance Therapies, Medical Grand Rounds, Cambridge Hospital, Cambridge MA, June 1997.

The Older Patient with Chemical Dependency: Recognition and Management. Geriatric Program Grand Rounds. Beth Israel-Deaconess Medical Center, Boston MA, October 1997.

The Impact of Effective Treatment: A clinical perspective; Why and how methadone works: the assessment process; Dosing issues. Methadone in Maine: Another Look. Opioid Addiction Treatment Improvement Project, Portland ME, December 1997.

Buprenorphine: Patient selection and management issues. Addiction Treatment Program Staff Conference, Waltham Deaconess Hospital, Waltham MA, January 1998.

Update on Chemical Dependency for Pharmacists. Massachusetts Pharmacy Association Annual Meeting, Waltham MA, January 1998.

Chemical Dependency in the Older Adult. Westwood-Pembroke Hospital, Pembroke MA., March 2000; Quincy Medical Center, Quincy MA., June 2000; Lakeville Rehabilitation Centre, Lakeville MA., September 2000.

Panelist, Inaugural Annual Debate, Harvard Medical School Addiction Medicine Conference: Resolved: The future of addiction treatment is in primary care settings (with H.R. Barnes MD), Boston MA., Oct 2000.

Advances in Detoxification. Harvard Medical School Addiction Medicine Conference, Boston MA., October 2000

Oxycontin and other synthetic Opioid Abuse. Tufts Associated Health Plan, Waltham MA, December 2000; Massachusetts College of Pharmacy, February 2001, October 2001.

Chemical Dependency and Primary Care. Review Conference on Primary Care, Brigham and Women's Hospital, Boston MA, March 2002.

An evidence-based approach to Detoxification. Harvard Medical School Addiction Medicine Conference, Boston MA, October 2002.

Keynote Address: Methadone Treatment: Are we there yet? Boston College School of Social Work Conference on Methadone Treatment, Boston MA, April 2003.

**INVITED PRESENTATIONS (CONT'D):**

Chemical Dependency in HIV Disease: Challenges and Opportunities. Shattuck Hospital Annual Conference, Boston MA, May 2003.

Treatment of Psychiatric Co-Morbidities in Patients with Opioid Dependency. 2-day Workshop. New England Institute of Opioid Studies, Newport, Rhode Island. July 2003.

What's New in Detoxification? Harvard Medical School Addiction Medicine Conference, Boston MA, October 2003.

Advances in Treatment of Opioid Dependency. Grand Rounds. Bay State Medical Center, Springfield MA, December 2003. NORCAP Treatment Center, Norwood MA, January 2004; Bay Ridge Hospital, Lynn MA, March 2004; Good Samaritan Medical Center, Brockton MA, May 2004.

Evaluation and Management of the Chemically Dependent Patient with Pain. Brigham and Women's Hospital Pain Conference, Cambridge MA, June 2004, April 2005.

Principles of Detoxification: An evidence-based approach. Harvard Medical School Addiction Medicine Conference, Boston MA, October 2004.

Oxycontin Abuse and Rave Drugs: Teaching Old Dogs New Tricks, Pri-Med Conference, Boston MA, November 2004

Treatment of the Ambulatory Patient with Chemical Dependency. Conference on Primary Care, Brigham and Women's Hospital, Boston MA, March 2005

Advances in Treatment of Opioid Dependency, Northeast Correctional Medical Conference, Sturbridge MA, May 2005

Treating Psychiatric Co-morbidities in Opioid Dependent Patients, New England School of Addiction Studies, Waterville ME, July 2005.

Use of Buprenorphine in Opioid Dependency. Reckitt Benckiser Mentor Program, Providence RI, August 2005; Boston MA, November 2005; Cambridge MA, March 2006, September 2006.

Principles of Detoxification: An evidence-based approach. Harvard Medical School Addiction Medicine Conference, Boston MA, October 2005.

Treatment of Psychiatric Co-morbidities in Chemically Dependent Patients. Bournewood Hospital Psychiatric Grand Rounds, April 2006; New England School of Addiction Studies., September 2006; Lennox, MA, October 2006.

Management of Dual Disordered Chemically Dependent Patients: One Day Workshop. Drug and Alcohol Treatment Association of Rhode Island. Cranston RI, October 2006.

Maintenance and Detoxification using Buprenorphine: Issues for Counseling Staff: One-day workshop. Drug and Alcohol Treatment Association of Rhode Island, Cranston RI, October 2006.

**INVITED PRESENTATIONS (CONT'D) :**

Pain and Addiction: Common Threads, Common Problems, Common Solutions: One day workshop. Drug and Alcohol Treatment Association of Rhode Island, Cranston RI, October 2006.

Principles of Detoxification: Old and New Evidence. Harvard Medical School Addiction Medicine Conference, Boston MA, October 2006.

Psychopharmacology of Addictive Disorders. National SMART Recovery Conference, Waltham MA, November 2006.

Role of the Primary Care Physician in the Management of the Patient with Alcoholism. Medical Grand Rounds, Caritas Carney Hospital, Dorchester MA, January 2007.

Office Based Care of the Patient with Alcoholism. Review of Primary Care, Brigham and Women's Hospital Review Course, Boston MA, March 2007.

Chemical Dependency: What the Psychiatrist needs to know and do. Caritas St. Elizabeth's Hospital, Boston MA: March 2007, March 2008 (8 hour Resident workshop).

Pain Management in the Patient with Addiction. Drug and Alcohol Treatment Association of RI, Providence RI, April 2007.

Medical Management of the Opioid Medication Assisted Patient. Providence VA Hospital Psychiatry Grand Rounds, April 2007; Thundermist Health Center, Woonsocket RI, June 2007.

The place of Opioid Agonist Treatment in the Management of Patients with Opioid Abuse; Cape Cod Symposium on the Addictions. Hyannis MA, September 2007.

Evidence-Based Treatment of Withdrawal Syndromes. Harvard Medical School Conference on the Addictions, Boston MA, October 2007.

Tobacco Cessation and Mental Illness. Bridging the Gap Conference, National Alliance for Mental Illness- Rhode Island, Warwick RI, November 2007.

Medication Assisted Treatments for Chemical Dependency, Psychiatry Grand Rounds, Mt. Auburn Hospital, Cambridge MA, November 2007.

Management of the Perioperative Patient with Addiction. Anesthesia Grand Rounds, St. Luke's Hospital, New Bedford MA; December 2007.

Chemical Dependency: Issues for the Criminal Defense Attorney. Committee for Public Counsel Services, Boston MA, December 2007.

Buprenorphine: 5 years later. Tufts Associated Health Plan, Watertown MA, March 2008.

Office Based Care of the Patient with Alcoholism: Focus on Ambulatory Detoxification and use of Anti-Craving Drugs. Brigham and Women's Hospital Internal Medicine Review Course, Boston MA, March 2008.

**INVITED PRESENTATIONS (CONT'D):**

The ASAM Patient Placement Criteria (PPC-2): Clinical Utility. Rhode Island Drug and Alcohol Treatment Association. Cranston, Rhode Island, April 2008.

Management of Psychiatric Problems in the Chemically Dependent Patient. RI DATA, Cranston RI, April 2008

Benzodiazepine Abuse: Detection and Management. Caritas St. Elizabeth's Hospital, SECAP Conference, Boston MA, July 2008.

Principles of Detoxification: An Evidence-Based Approach. Harvard Medical School Conference on the Addictions. Boston, MA, October 2008.

MA Management of the Ambulatory Patient with Alcohol Dependency, Brigham and Women's Hospital Review Course in Medicine. Boston, March 2009.

Advances in the Treatment of the Dually-Diagnosed Opioid Dependent Patient. Rhode Island DATA. Cranston RI, April 2009, September 2009.

Use of Methadone in Pain Treatment: Teaching an Old Dog New Tricks? Massachusetts Society of Addiction Medicine Spring Conference, Massachusetts Medical Society, Waltham MA, April 2009.

Risk Management in the Opioid Treatment Program. Katherine O'Neill, Esq., Co- presenter. American Association for the Treatment of Opioid Dependency National Conference. New York, NY. April 2009.

Risk Management in Methadone Treatment: Role of Best Practices. Lisa Torres, JD, Todd Mandel MD - co-presenters. New England Institute of Addiction Studies, Waterville ME. September 2009.

An Evidence-Based Approach to Treatment of Abstinence Syndromes and Drug Craving. Harvard Medical School Course on Addictions, Boston MA, October 2009.

Effective Strategies in Outpatient Methadone Treatment: Clinical Guidelines and Liability Prevention, Institute for Research,

Education and Training in Addictions (IRETA), University of Illinois at Chicago, October 2009.

Best Practices in Outpatient Opioid Treatment Programs: Managing Liability: Massachusetts Chapter, American Society of Addiction Medicine; Massachusetts Medical Society. Waltham MA, November 2009.

Primary Care Recognition and Management of the Alcoholic Patient. Brigham and Women's Hospital Review Course in Internal Medicine, Boston MA, March 2010.

Treatment of Psychiatric Co-morbidities in the Opioid Abusing Patient. RI Drug and Alcohol Treatment Association, Cranston RI, April 2010.

Risk Management in Methadone Treatment. IRETA, Orlando FL, May 2010.

**INVITED PRESENTATIONS (CONT'D) :**

Treatment of Psychiatric Co-Morbidities in Patients with Opioid Dependency. Rhode Island Drug and Alcohol Treatment Association, Providence RI. April 2010, October 2010.

Addiction Psychopharmacology: New Frontiers in the Common Threads of Pain and Addiction Treatment. Beth Israel Deaconess Hospital Annual Pain Conference, Boston MA, June 2010

Moderator, Debate on "Use of Chronic Benzodiazepine Therapy in Chemically-Dependent Patients: Point/Counterpoint." Drs. Stuart Gitlow and Domenic Ciraulo. Massachusetts Medical Society, Waltham MA, August 2010.

Management of Prescribing Risk in the Use of Opioids. IRETA Conference, Albuquerque NM, September 2010.

Overview: Addiction and the Criminal Justice System. Cape Cod Symposium on Addictive Disorders, Hyannis MA. September 2010.

Table Discussant, Risks of Diversion of Buprenorphine in the Treatment of Opioid Dependency, Cape Cod Symposium on Addictive Disorders, Hyannis MA. September 2010.

Treatment of Discontinuation Syndromes in the Era of SBIRT: Use Of Withdrawal Scales and Symptom-Driven Treatment. Addiction Medicine: Annual Harvard Course: Treatment in the Era of Screening, Brief Intervention and Referral to Treatment. Boston, MA. October 2010.

Management of the Pain Patient with Addiction. Psychiatry Colloquium, Providence DVA Medical Center, Providence RI. October 2010.

Risk Management in the Opioid Treatment Program. T. Mandell MD, L. Torres JD, co-presenters. American Association for the

Treatment of Opioid Dependency National Conference. Chicago IL  
October 2010.

Advances in Opioid Pharmacology and Treatment. Drug and Alcohol  
Treatment Association of Rhode Island (DATA), Full-day workshop,  
Providence RI, March 2011.

Primary Care Approaches to Diagnosis and Management of Alcoholic  
Patients. Brigham and Womens' Hospital Primary Care Course,  
Boston MA, March 2011.

Treatment of the Dually-Diagnosed Opioid Dependent Patient. Drug  
and Alcohol Treatment Association of Rhode Island (DATA), Full  
day workshop. Providence RI, June 2011.

Addiction Psychopharmacology: New Frontiers in the Common Threads  
of Pain and Addiction Treatment. Beth Israel Deaconess Hospital  
Annual Pain Conference, Boston MA, June 2011.

#### **INVITED PRESENTATIONS (CONT'D) :**

QT or not QT, is that really the question? Methadone and cardiac  
safety. Massachusetts Psychiatric Society Committee for Alcohol  
and other Addictions. Boston Medical Center, Boston MA June 2011;  
Cape Cod Symposium on Addictive Disorders, Hyannis MA, September  
2012.

Treatment Considerations in the Pregnant Patient. Moderator -  
Jacqueline Starer MD (presenter). Massachusetts Medical Society,  
Waltham MA, July 2011.

Methadone 101: Basics of Patient Selection and Management. (Full  
day workshop) MedMark Treatment Program, Sacramento CA, August  
2011.

Principles of Opioid Detoxification: Strategies for success.  
Cape Cod Symposium on Addictive Disorders. Hyannis MA, September  
2011.

Principles of Benzodiazepine Detoxification: Strategies for  
success. Cape Cod Symposium on Addictive Disorders, Hyannis MA,  
September 2011.

Medical Detoxification from Drugs of Abuse: A Case-Based  
Approach. Harvard Annual Course on the Addictions, Boston MA,  
October 2011.

Treatment of Pain and Addiction: Navigating Safer Waters.  
Neurology Grand Rounds, Faulkner Hospital, Boston MA, October  
2011.

Management of Alcoholism in the Primary Care Setting: A case-  
based approach. Brigham and Womens' Hospital Primary Care  
Course, Cambridge MA, March 2012.

Medical Complications of Drugs of Abuse. Cambridge Alliance Symposium on Chemical Dependency. Boston MA, April 2012.

Methadone 101: Basics of Patient Selection and Management. (Full day workshop). MedMark Treatment Programs, Savannah GA, April 2012.

Medical Complications of Addiction. Addiction Medicine for All Providers. Massachusetts Society of Addiction Medicine. Massachusetts Medical Society, Waltham MA, June 2012.

Management and Psychopharmacology of Patients with Addiction. Principles and Practice of Pain Medicine, Beth Israel Deaconess Hospital Pain Program, Boston MA, June 2012.

Medical Management of Detoxification: A Case-Based Approach. Harvard Annual Course on the Addictions, Boston MA, October 2012.

International Perspectives on Treatment of Opioid Dependency, Lessons learned from Canada. Massachusetts Chapter of American Society of Addiction Medicine, Waltham MA, December 2012.

The Use of Opioid Antagonists in the Treatment of Chemical Dependency: Cautions and Precautions. MHBHS Weekly Conference, DVA Medical Center, Providence RI, February 2013.

**INVITED PRESENTATIONS (CONT'D) :**

Medical Consequences of Addiction. Monthly Fellowship Conference, Boston Medical Center - DVA Addiction Fellowship Program, Boston MA, March 2013.

Management of Alcoholism in the Primary Care Setting: Principles of SBIRT. Brigham and Womens' Hospital Primary Care Course, Cambridge MA, March 2013.

Medical Marijuana: What the Addiction Physician Needs to know. Hill K. (presenter). Moderator. Massachusetts Chapter of American Society of Addiction Medicine Spring Symposium, Waltham MA, April 2013.

Buprenorphine Adverse Drug Reactions: A Webinar. Presented by the Physicians Clinical Consultation Service- Opioids (PCCS-0). American Psychiatric Association. Attleboro MA, April 2013.

Discussant, Mortality and Morbidity Conference, Medical Service, DVA Medical Center, Providence RI, May 2013

Medical Complications of Addiction. 2<sup>nd</sup> Annual Massachusetts Society of Addiction Medicine Conference: Addiction Medicine for All Providers. Massachusetts Medical Society, Waltham MA, June 2013.

The Pain Patient and Addiction: Common Threads. Principles and Practice of Pain Medicine Conference. Beth Israel Deaconess Medical Center, June 2013.

QT or not QT: Is that STILL the question? Methadone and the Heart. Cape Cod Symposium on Addictive Disorders, Hyannis MA, September 2013.

Rational Medical Detoxification from Drugs of Abuse: A Case-Based Approach. Harvard Annual Course on the Addictions, Boston MA, October 2013.

Alcohol Detoxification in the Hospitalized Patient. Department of Medicine Grand Rounds, Memorial Hospital of Rhode Island, November 2013.

Management of Alcoholism in the Primary Care Setting: Principles of SBIRT. Brigham and Women's Hospital Primary Care Course, Boston MA, March 2014.

Medical Complications of Addictive Disorders. Monthly Fellowship Conference, Boston Medical Center-DVA Addiction Fellowship Program, Boston MA, March 2014.

Jews and Chemical Dependency. Temple Beth Shalom, Providence RI, March 2014; Temple Torat Yisrael, East Greenwich RI, April 2014.

Opioid Prescribing Guidelines: Implications for the Practicing Physician. Neponset Health Center, Dorchester MA. Part 1- April 7, 2014, Part 2- May 5, 2014.

Addiction Recognition and Management in the Patient with Pain. BIDMC Principles and Practice of Pain Medicine, Harvard Medical School, Boston MA, June 2014.

Medical Complications of Addiction. 3<sup>rd</sup> Annual MASAM Addiction Medicine Conference: Risk Management for All Providers. Massachusetts Medical Society, Waltham MA, June 2014.

**INVITED PRESENTATIONS (CONT'D) :**

Minimizing misuse of opioids in the treatment of patients with pain: Clinical Guidelines and implications for the practicing clinician. Department of Neurology Grand Rounds, Rhode Island Hospital and Alpert Medical School, Brown University, Providence RI, July 2014.

Management of alcohol withdrawal in the hospitalized patient. Medical Resident Noon Conference, Department of Veterans Affairs Medical Center, Providence RI, August 2014.

Chemical Dependency in Older Veterans - Recognition and Management. Department of Psychiatry Monthly Colloquium, Department of Veterans Affairs Medical Center, Providence RI, September 2014.

Rational Methods of Treating Opioid Dependency. 27<sup>th</sup> Cape Cod Symposium on Addictive Disorders, C4 Conference Solutions, Hyannis MA, September 2014.



Understanding Drug Testing: Uses, limitations and myths.  
Department of Veterans Affairs, Community Based Office Center,  
Middletown, RI, October 2014

Medication Assisted Therapy: Role of the Primary Care Provider  
in treatment of prescription drug abuse - uses of Methadone,  
Buprenorphine and Naltrexone. Public Health Grand Rounds, RI  
Department of Public Health, Providence RI, October 2014

SBIRT and Motivational Enhancement: Role in the treatment of  
individuals requiring on-going controlled substance prescribing.  
Neponset Health Center, Department of Adult Medicine, Dorchester  
MA, November 2014

Treatment of Alcohol Withdrawal Delirium. Medical Resident  
Conference. DVA Medical Center, Providence RI. January 2015

Use of Controlled Substances in a Community Health Center Primary  
Care Setting. Development of an Audit and Preliminary Results;  
Massachusetts League of Community Health Centers Conference: A  
Prescribing Practice Summit for Massachusetts Health Center  
Leaders. Boston MA, February 2015.

Management of Alcoholism in the Primary Care Setting: Principles  
of SBIRT. Brigham and Women's Hospital Primary Care Course,  
Boston MA, March 2015.

Medical Complications of Addictive Disorders. Monthly Fellowship  
Conference, Boston Medical Center-DVA Addiction Fellowship  
Program, Boston MA, March 2015.

Treatment of the Hospitalized Patient with Alcohol Withdrawal  
Syndrome. Department of Medicine Grand Rounds, St. Vincent  
Hospital, Worcester MA, March 2015.

Update in Addiction Psychopharmacology. Principles and Practice  
of Pain Medicine, Beth Israel Deaconess Hospital, Boston MA, June  
2015.

Choice of Agonist, Antagonist and "Drug-Free" Treatment of Opioid  
Use Disorder.

PCSS Small Group Discussion, Providers Clinical Support System,  
Internet Conference, June 2015.

**INVITED PRESENTATIONS (CONT'D) :**

Rational Medical Detoxification from Drugs of Abuse: Focus on  
Veterans/TBI. Harvard Annual Course on the Addictions, Boston  
MA, October 2015.

Medical Complications of Addictive Disorders. Monthly Fellowship  
Conference,  
Boston Medical Center-DVA Addiction Fellowship Program, Boston  
MA, March  
2016.

Chemical Dependency: What the Internist needs to know. Brigham and Women's Hospital Update in Internal Medicine Course. Boston MA, March 2016.

Addiction Psychopharmacology. Beth Israel Deaconess Medical Center,  
Evaluating and Treating Pain: Principles and Practice of Pain Medicine, Cambridge MA, June 2016.

Methadone and QTc prolongation - clinical issues. PCSS Small Group Discussion, Providers Clinical Support System, Internet Conference (with Wyatt S), June 2016

Opioid Withdrawal Management: Looking forward to rational strategies. Harvard Course on the Addictions, Harvard Medical School, October 2016.

Pain Management and Opioid Dependency. 10<sup>th</sup> Annual Lemuel Shattuck Hospital Conference on Addictions, University of Massachusetts and Tufts Medical Schools, Dorchester MA, November 2016.

Discussant, Difficult Case Conference. A difficult detoxification. Department of Psychiatry, DVA Medical Center, Providence RI, February 2017.

Dealing with the Opioid Crisis: Block Island Solutions. National Alliance for the  
Mentally Ill (NAMI) Block Island Chapter conference, Block Island RI, May 2017.

Faculty, Case Studies, Buprenorphine Waiver Course, Brown University Alpert School of Medicine, Division of Family Medicine, Memorial Hospital, January 2018.

Table Discussant, Medical Cannabis and Addiction Medicine Practice Consequences, Hurley B. (presenter), Cape Code Symposium on Addictive Disorders, Hyannis MA, September 2018.

Medical Complications of Substance Use Disorders. Department of Internal Medicine Residents' Teaching Conference. Rhode Island Hospital, November 9, 2018.

Strategies for management of sedative-hypnotic drug withdrawal syndromes.  
Brown University Addiction Medicine Fellowship lecture, Rhode Island Hospital,  
January 2019.

Judicious prescribing and exit strategies for benzodiazepine use in Primary Care.  
Rhode Island Chapter, American College of Physicians Annual Meeting, Multiple Small Feedings of the Mind; Providence RI, March 2019.

Medical Complications of Substance Use: Update. MASAM Pearls for Practice in the Addictions: Controversies, Challenges and

Celebrating Solutions. Massachusetts Medical Society, Waltham MA, May 2019.

**INVITED PRESENTATIONS (CONT'D) :**

Advances in Opioid Withdrawal Management. Beth Israel Deaconess Medical Center, Evaluating and Treating Pain: Principles and Practice of Pain Medicine, Cambridge MA, June 2019.

Medical Co-occurring disorders in Substance Use Disorders; Treatment of Intoxication and Withdrawal; Caffeine-related Disorders; Treatment of Substance Use Disorders in Older Adults. American Physician Institute; Board Review Course in Addiction Medicine/Psychiatry. Rosemont Hilton Hotel, Chicago IL, July 2019.

Medical-Forensic Consultation for the Addiction Medicine Physician. Presentation to the Addiction Medicine Fellowship, Boston University School of Medicine/DVA Medical Center, Boston MA, August 2019

Abstinence vs. Medications for Addiction Treatment (MAT) - Why the controversies? What are the solutions? Rational approaches. 32<sup>nd</sup> Cape Cod Symposium on Addictive Disorders, C4 Presentations; Hyannis MA, September 2019.

Table Discussant. The Overlap of HCV and Addiction Medicine, Martinez A. 32<sup>nd</sup> Cape Cod Symposium on Addictive Disorders, C4 Presentations; Hyannis MA, September 2019.

**MAJOR CONFERENCES & SEMINARS ATTENDED**

Substance Abuse and the Adolescent. S. Schnoll MD, PhD,  
Coordinator, University of Pennsylvania; Atlanta GA, April 1978.

Emergency Health Care of the Alcoholic, DePaul Rehabilitation  
Hospital, Milwaukee WI, December 1978.

Symposium on Emergency Health Care, Institute of Trauma and  
Emergency Medicine, Milwaukee County Medical Complex, WI,  
February 1979.

Board Review Course in Internal Medicine, University of Chicago,  
Chicago IL, July 1980.

Advances in Internal Medicine, Tufts University School of  
Medicine, Boston MA, June 1981.

Annual Meeting, Society for Research and Education in Primary  
Care Internal Medicine (SREPCIM), Washington DC, June 1982.

World Health Organization- AMERSA Conference on International  
Aspects of Substance Abuse, Berkeley CA, August 1982.

Conference on Current Management of Hypertension, Medical College  
of Wisconsin, November 1982.

Career Teacher Meeting on Medical Education in Substance Abuse,  
Rockport MA, April 1983.

Career Teacher Meeting on Research Issues in Substance Abuse,  
Toronto Canada, June 1983.

Annual Meeting, Association for Medical Education and Research in  
Substance Abuse (AMERSA), Washington DC, November 1983.

Annual Meeting, American Medical Society on Alcoholism and Other  
Drug Dependencies (AMSAODD), Washington DC, April 1984.

Annual Meeting, AMERSA, Washington DC, November 1984. Regional  
Meeting, SREPCIM, Boston MA, December 1984.

Annual Session, American College of Physicians, Washington DC,  
April 1985.

Annual AMERSA Meeting, Alcohol, Drugs and the Primary Care  
Physician: Issues, Roles and Responsibilities, Palm Springs CA,  
November 1985.

Regional SREPECIM Meeting, Framingham MA, December 1985.

Annual AMSAODD Meeting, San Francisco CA, April 1986.

Evaluation and Treatment of the Patient with Post-Traumatic Stress Disorder, Veterans Administration, Providence RI, May 1986.

**MAJOR CONFERENCES & SEMINARS ATTENDED (CONT'D) :**

Review Course for Certification, American Medical Society on Alcoholism and Other Drug Dependencies, New York, August 1986.  
Annual AMERSA Meeting, Washington DC, November 1986.

Regional AMSAODD Meeting, Boston MA, December 1986.

Regional SREPCIM Meeting, Boston MA, December 1986.

Stress and Medical Training, Regional Meeting, American Medical Student Association, Providence RI, February 1987.

Regional SREPCIM Meeting, Framingham MA, November 1987.

Regional AMSAODD Meeting, Boston MA, December 1987.

Annual AMSAODD Meeting, Washington DC, April 1988.

Annual AMERSA Meeting, Washington DC, November 1988.

Regional AMSAODD Meeting, Dedham MA, December 1988.

Workshop on AIDS and Substance Abuse: Training the trainers.  
Center for AIIDS Education, Alexandria VA, January 1989.

Rhode Island State Meeting, American College of Physicians,  
Providence RI, March 1989.

Newer Antibiotics in Infectious Disease, Symposium, Brown  
University, Providence RI, March 1989.

Annual Session, American College of Physicians, San Francisco CA,  
April 1989.

Symposium on Thrombolytic Therapy in Myocardial Infarction, San  
Francisco CA, April 1989.

Primary Care Training in Substance Abuse: A Faculty Development  
Workshop. Brown University Center for Alcohol and Addiction  
Studies, Providence RI, May 1989.

AIDS for Primary Caregivers: A Faculty Development Course. Beth  
Israel Hospital and University of Massachusetts Medical Center,  
Lennox MA, May 1989.

Preventing HIV Infection in Patients in Chemical Dependency  
Programs. Center for AIDS and Substance Abuse Training and Office  
of Alcohol and Drug Abuse Prevention, State of Maine. Portland  
Maine, August 1989.

Governor's Conference on Drug Abuse in Rhode Island. Providence RI, November 1989.

AMERSA National Meeting, Rockville MD, November 1989.

Region III ASAM Meeting, Providence RI, November 1989.

**MAJOR CONFERENCES & SEMINARS ATTENDED (CONT'D):**

Medical Review Officer Training Course, Employee Health Programs, S. Plainfield NJ, January 1990.

Northeast Regional SGIM Meeting, Farmington CT, February 1990.

AIDS and Substance Abuse: A Practical Course for Clinicians, BRUNAP and Northeast Area Health Education Centers, Warwick RI, March 1990.

AIDS and Substance Abuse: A Faculty Development Course, Northeast Area Health Education Center, New Haven CT, March 1990.

Society of General Internal Medicine Annual Meeting and Pre-course: Incorporating HIV Disease in Primary Care Practice. Washington DC, May 1990.

AIDS and Substance Abuse: Project ADEPT Faculty Development Workshop, Brown University, June 1990.

AIDS and Substance Abuse: Northeast AIDS Education and Training Center (AHEC) Faculty Development Workshop for Primary Care Providers, Lake Waramaug, CT, September 1990.

AMERSA National Meeting, Rockville MD, November 1990.

ASAM Region III Meeting, Worcester MA, December 1990.

Third National Meeting on AIDS and Substance Abuse, American Society of Addiction Medicine, San Francisco CA, February 1991.

Annual Session, American College of Physicians, New Orleans LA, April 1991.

Annual Session, American Society of Addiction Medicine, Boston MA, April 1991.

AIDS and Substance Abuse, Northeast AHEC Faculty Development Workshop, New Haven CT, June 1991.

Treatment Criteria in Addiction Medicine: The Challenge to Provide Cost-Effective Care, Faulkner Hospital, Boston MA, November 1991.

American Society of Addiction Medicine Region III Annual Meeting, Cambridge MA, November 1991.

Managed Care and Addictions Treatment, Southwood Hospital,  
NORCAP, Norwood MA, January 1992.

Society of General Internal Medicine Annual Meeting and Pre-  
course, AIDS and the Primary Care Provider, Washington DC, May  
1992.

American Society of Addiction Medicine, Region III Annual  
Meeting, Waterbury CT, January 1993.

Substance Abuse Educational Conference, Conference of Boston  
Teaching Hospitals, Boston MA, April 1993.

**MAJOR CONFERENCES & SEMINARS ATTENDED (CONT'D):**

Bay State Medical Center Conference on Substance Abuse Education,  
Springfield MA, May 1993.

Annual Session, American Society of Addiction Medicine, Los  
Angeles, CA, May 1993.

The Changing Face of Mutual Help. Faulkner Hospital Fall  
Addictions Conference, November 1993.

Society of General Internal Medicine, New England Regional  
Meeting, December 1993.

Conference of Boston Teaching Hospitals. Hospitals, Community  
Health Centers and Treatment of Substance Abusers. Boston, MA,  
April 1994.

Annual Session, American Society of Addiction Medicine, New York,  
NY. April 1994.

Smoking and Chemical Dependency, American Society of Addiction  
Medicine. Boston MA, October 1994.

Chemical Dependency and the Caregiver: Health Professional  
Impairment. Physician Health Services, Massachusetts Medical  
Society. Waltham MA, November 1994.

Board Meeting, American Society of Addiction Medicine. San Diego  
CA., November 1994.

Annual Session, American Society of Addiction Medicine, Chicago  
IL. April 1995.

Regional Meeting, American Society of Addiction Medicine,  
Cincinnati OH, September 1995.

Regional Meeting, American Society of Addiction Medicine,  
Waterbury CT, October 1995.

HIV and Substance Abuse: The Twin Epidemics. Faulkner Hospital,  
Boston MA, November 1995.

Board Meeting, American Society of Addiction Medicine, San Diego CA, October 1995.

New England Regional Society for Case Management, Boxboro MA, December 1995.

Ruth Fox Course for Clinicians, American Society of Addiction Medicine, Atlanta GA, April 1996.

Medical-Scientific Conference, American Society of Addiction Medicine, Atlanta GA, April 1996.

#### **MAJOR CONFERENCES & SEMINARS ATTENDED (CONT'D)**

Maine State ASAM Meeting, Augusta Maine, April 1996.

American Academy of Addiction Psychiatry-American Society of Addiction Medicine Combined State Meeting, Providence RI, June 1996.

Review Course, Certification Examination in Addiction Medicine, American Society of Addiction Medicine. Chicago IL. October 1996.

Addiction Medicine into the 21st Century: Region III Meeting, American Society of Addiction Medicine. Northampton MA, November 1996.

Ruth Fox Course for Clinicians, American Society of Addiction Medicine, San Diego CA, April 1997.

Medical-Scientific Conference, American Society of Addiction Medicine, San Diego CA, April 1997.

Methadone in Maine: Another Look. Opioid Addiction Treatment Improvement Project, Portland ME, December 1997.

American College of Physicians, Annual Medical-Scientific Meeting, San Diego, CA, April 1998.

Dual Diagnosis: Quandaries, Conundrums and Solutions. Faulkner Hospital Addictions Conference, Boston MA, September 1998.

American Methadone Treatment Association Annual Conference, New York, NY, September 1998.

Pri-Med Conference on Primary Care, Harvard Medical School. Boston MA, November 1998.

Medical-Scientific Conference, American Society of Addiction Medicine, New York, NY, April 1999.

Pain and Addiction: The "New" Dual Diagnosis: Working towards a Comprehensive Approach to Treatment. Faulkner Hospital Addictions Conference, Boston MA, May 1999.



Pri-Med Conference on Primary Care, Harvard Medical School.  
Boston, MA, November 1999.

Partners HealthCare Annual Partners Day Presentation, Harvard  
Medical School, Boston MA, February 2000.

American Methadone Treatment Association Annual Conference, San  
Francisco, CA, April 2000.

Society of General Internal Medicine, National Meeting, Boston  
MA. May 2000.

Prime-Ed Conference on Primary Care, Harvard Medical School,  
Boston, MA, September 2000

**MAJOR CONFERENCES & SEMINARS ATTENDED (CONT'D)**

Partners HealthCare Annual Partners Day Presentation, Harvard  
Medical School, Boston MA, February 2001

Improving Treatment Outcomes: Best Practices Conference on Opioid  
Dependency Treatment. Drug Abuse and Alcoholism Treatment  
Association of Rhode Island, Newport RI., March 2001.

Use of Buprenorphine, Course for Clinicians. NIDA, Newport RI,  
August 2001.

Partners HealthCare Annual Partners Day Presentation, Harvard  
Medical School, Boston MA, February 2002.

Society of General Internal Medicine, Regional Meeting, Boston  
MA, March 2002.

Pri-Med Conference on Primary Care, Harvard Medical School,  
Boston MA, September 2002.

Annual Harvard Conference on Addictions, Harvard Medical School,  
Boston MA, October 2002.

Boston College School of Social Work Conference on Methadone  
Treatment, Boston MA, April 2003.

American Methadone Treatment Association Annual Meeting, San  
Francisco, CA.  
April 2003.

Treatment of HIV Disease: Challenges and Opportunities. Shattuck  
Hospital Annual Conference, Boston MA, May 2003.

New England School of Opioid Studies, Annual Session, Newport  
Rhode Island, July 2003.

Pain and Chemical Dependency, 6th Annual Meeting, Beth Israel  
Hospital, New York; February 2004.

Buprenorphine Mentor Meeting, New Orleans LA. April 2004.

Pain and Chemical Dependency: Common Threads, American Society of Addiction Medicine, Washington DC, April 2004.

Medical-Scientific Conference, American Society of Addiction Medicine, Washington DC, April 2004.

Annual Harvard Conference on Addictions. Harvard Medical School, Boston MA, October 2004

Pri-Med Conference on Primary Care, Harvard Medical School, Boston MA, November 2004

Partners HealthCare Annual Partners Day Presentation. Harvard Medical School, Boston MA, February 2005.

Annual Harvard Conference on Addictions. Harvard Medical School, Boston MA, October 2005.

**MAJOR CONFERENCES & SEMINARS ATTENDED (CONT'D):**

Ruth Fox Course on Addictions. American Society of Addiction Medicine, San Diego CA; April 2006.

Medical-Scientific Conference, American Society of Addiction Medicine, San Diego, CA; April 2006.

Treatment of the patient with bipolar illness, Massachusetts General Hospital Psychiatry Academy Conference. Burlington MA, June 2006.

Cape Cod Symposium on the Addictions/ American Society of Addiction Medicine Joint Meeting, Hyannis MA, September 2006.

What's New in Liver Disease? American Liver Disease Foundation. Dedham, MA, September 2006.

Annual Harvard Conference on Addictions. Harvard Medical School, Boston MA, October 2006.

Treatment of Common Psychiatric Problems, Massachusetts General Hospital Psychiatry Academy Conference, Burlington MA, March 2007.

Medical College of Wisconsin, Alumni Clinic Day, Milwaukee WI, April 2007.

Pri-Med Updates in Psychiatry, Boston MA, June 2007.

Linking Pharmacology to Clinical Management: Improving Long-Term Outcomes with Atypical Antipsychotics. CME LL, Boston MA, June 2007.

Cape Cod Symposium on the Addictions/American Society of Addiction Medicine Joint Meeting, Hyannis MA, September 2007.

Annual Harvard Conference on the Addictions, Boston MA, October 2007.

Lemuel Shattuck Hospital Conference on the Addictions, Boston MA, November 2007.

Annual Scientific Meeting, American Academy of Addiction Psychiatry, San Diego, CA, December 2007.

Pain and Addiction: Common Threads. American Society of Addiction Medicine, Toronto, Ontario, Canada; April 2008.

Annual Medical-Scientific Meeting, American Society of Addiction Medicine, Toronto, Ontario, Canada; April 2008.

Pain and Chemical Dependency. Massachusetts Society of Addiction Medicine. Waltham MA, June 2008.

Harvard Medical School Conference on the Addictions. Boston MA, October 2008.

Lemuel Shattuck Hospital Conference on the Addictions: Boston MA. November 2008.

**MAJOR CONFERENCES & SEMINARS ATTENDED (CONT'D:)**

American Association for the Treatment of Opioid Dependency National Conference. New York, NY, April 2009.

National Council on Alcoholism and Addictive Disorders Annual Meeting. New York NY. April 2009.

Cape Cod Symposium on Addictive Disorders, Hyannis MA. September 2009.

Harvard Medical School Conference on the Addictions, Boston MA, October 2009.

Effective Strategies in Outpatient Methadone Treatment: Risk Management, Institute for Research, Education and Training in Addictions, University of Illinois at Chicago, October 2009

Lemuel Shattuck Conference on the Addictions: Sober Treatment in Hard Times. Dorchester MA, November 2009.

Brigham and Women's Hospital Review Course in Internal Medicine, Boston MA, March 2010.

Cape Cod Symposium on Addictive Disorders, Hyannis MA. September 2010.

Harvard Medical School Conference on the Addictions, Boston MA, October 2010.

American Association for the Treatment of Opioid Dependency, Annual Meeting, Chicago IL, October 2010.

Update In Hepatitis C. Brown University, Full-day workshop. Providence, RI, June 2011.

Cape Cod Symposium on Addictive Disorders, Hyannis MA, September 2011.

Harvard Medical School Conference on the Addictions, Boston MA, October 2011.

National Institute on Drug Abuse (NIDA) Blending Conference: From Bench to Bedside, American Society of Addiction Medicine, Atlanta GA, April 2012

Annual Medical-Scientific Meeting. American Society of Addiction Medicine, Atlanta GA, April 2012.

Addiction Medicine for All Providers. Massachusetts Chapter of American Society of Addiction Medicine, Massachusetts Medical Society, Waltham MA, June 2012

Cape Cod Symposium on Addictive Disorders. Hyannis MA, September 2012.

International Perspectives on the Treatment of Opioid Dependency, Massachusetts Chapter of the American Society of Addiction Medicine, Waltham MA, December 2012.

2<sup>nd</sup> Annual Massachusetts Society of Addiction Medicine Conference: Risk Management for All Providers. Massachusetts Medical Society, Waltham MA, June 2013.

**MAJOR CONFERENCES & SEMINARS ATTENDED (CONT'D:)**

Principles and Practice of Pain Medicine, Beth Israel Deaconess Medical Center, Harvard Medical School, Boston MA, June 2013.

Scope of Pain: Safe and Competent Opioid Prescribing Education. Boston University School of Medicine, presented at Brown University, Providence RI, June 2013.

Cape Cod Symposium on Addictive Disorders, Hyannis MA, September 2013.

Harvard Medical School Conference on the Addictions, Boston MA, October 2013.

International Perspectives on Treatment of Opioid Dependency, Lessons learned from the United Kingdom, Canada and Switzerland. Massachusetts Chapter of American Society of Addiction Medicine, Massachusetts Medical Society, Waltham MA, December 2013.

3<sup>rd</sup> Annual Massachusetts Society of Addiction Medicine Conference: Risk Management for All Providers. Massachusetts Medical Society, Waltham MA, June 2014.

BIDMC Principles and Practice of Pain Medicine, Harvard Medical School, Boston MA, June 2014.

27<sup>th</sup> Cape Cod Symposium on Addictive Disorders, C4 Conference Solutions, Hyannis MA, September 2014.

Massachusetts League of Community Health Centers Conference: A Prescribing Practice Summit for Massachusetts Health Center Leaders. Boston MA, February 2015.

Update in the Office Practice of Internal Medicine. Brigham and Women's' Hospital Primary Care Course, Boston MA, March 2015.

Principles and Practice of Pain Medicine, Beth Israel Deaconess Hospital, Boston MA, June 2015.

4<sup>th</sup> Annual Massachusetts Society of Addiction Medicine Conference: Review of Addiction Medicine. Massachusetts Medical Society, Waltham MA, June 2015

28<sup>th</sup> Cape Cod Symposium on Addictive Disorders, C4 Conference Solutions, Hyannis MA, September 2015.

Opioid Overdose Prevention and Intervention Practices for Office-Based Practitioners: Safe Opioid Prescribing Practice and Office-Based Treatment of Opioid Use Disorders. Brown University, Providence RI, January 2016

Benzodiazepines: Pharmacology in Co-Prescribing Risks and Concerns. Brown University, Providence RI, May 2016.

5<sup>th</sup> Annual Massachusetts Society of Addiction Medicine Conference: Pearls for Practice, Massachusetts Medical Society, Waltham MA, June 2016

#### **MAJOR CONFERENCES & SEMINARS ATTENDED (CONT'D:)**

29<sup>th</sup> Cape Cod Symposium on Addictive Disorders, C4 Conference Solutions, Hyannis MA, September 2016.

Lemuel Shattuck Hospital Conference on Addictions, University of Massachusetts and Tufts University Schools of Medicine, Dorchester MA, November 2016.

Hepatitis C Virus: Changing the Paradigm. Brown University Alpert School of Medicine, Providence RI, January 2017.

Scope of Pain. Boston University School of Medicine. Waltham MA, February 2017.

Overcoming Clinical Challenges in Prescribing Buprenorphine, California Society of Addiction Medicine, Providence RI, March 2017.

Pearls for Practice: 5<sup>th</sup> Annual Massachusetts ASAM Review Course, Waltham MA, May 2017.

Medical College of Wisconsin, Alumni Weekend Symposium, Medical College of Wisconsin, Milwaukee WI, May 2017.

Complex Chronic Pain, Opioid Prescribing and Opioid Use Disorder: Pitfalls, Pearls and New Directions. California Society of Addiction Medicine, Providence RI, June 2017.

The ASAM Guidelines on Appropriate Use of Drug Testing in Clinical Addiction Medicine, American Society of Addiction Medicine, Providence RI, July 2017.

Addressing the Opioid Crisis Through Treatment of Opioid Use Disorder: The Physician's Role, American Medical Association, Chicago IL, September 2017.

Improving Maternal-Fetal Outcomes through Medication-Assisted Treatment of Opioid Use Disorders, Brown University Alpert School of Medicine, Royal Sonesta Hotel, Warwick RI, October 2017.

Buprenorphine Waiver Course, Brown University Alpert School of Medicine, Memorial Hospital of Rhode Island, Pawtucket RI, January 2018

Pearls for Practice: 6<sup>th</sup> Annual Massachusetts ASAM Review Course, Waltham MA, May 2018.

31<sup>st</sup> Cape Cod Symposium on Addictive Disorders, C4 Solutions, Hyannis MA, September 2018.

Rhode Island Chapter, American College of Physicians Annual Meeting; Providence RI, March 2019.

Pearls for Practice in the Addictions: Controversies, Challenges and Celebrating Solutions, Massachusetts Chapter, American Society of Addiction Medicine, Massachusetts Medical Society, Waltham MA, May 2019.

American Physician Institute; Board Review Course in Addiction Medicine/Psychiatry. Rosemont Hilton Hotel, Chicago IL, July 2019

#### **MAJOR CONFERENCES & SEMINARS ATTENDED (CONT'D:)**

32<sup>nd</sup> Annual Cape Cod Symposium On Addictive Disorders. C4 Presentations, Hyannis MA, September 2019.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUFFOLK SUPERIOR COURT

CASE NO. SUCR 1584CR10117

COMMONWEALTH )  
v. )  
)  
)  
WILLIAM BERRY )

AFFIDAVIT OF ELLIOT LEVINE

I Elliot Levine Esquire do hereby depose and state that:

1. I was the trial attorney for Mr. Berry in this case.
2. The trial in this case began on April 11, 2016.
3. The jury found Mr. Berry guilty of all the charges, including aggravated rape.
4. In preparing the case for trial I gave serious consideration to the pros and cons of having an expert on intoxication.
5. I made the strategic decision not to use an expert on intoxication.
6. I have examined the report of Dr. Allan J. Waldman, MD, provided to me by appellate counsel, Michael A. Nam-Kane, apparently for the purpose of responding to the strategic decision I had made.
7. After carefully reviewing the report of Dr. Waldman I remain firm regarding the strategic decision that I made on behalf of Mr. Berry.
8. In my opinion had Dr. Waldman testified the prosecuting attorney would have effectively made him the prosecutions most compelling witness. The Assistant District Attorney via cross-examination of Dr. Waldman would have convinced the jury that Mr. Berry would have known or reasonably should have known that the complainant was so intoxicated that her condition rendered her incapable of consenting to sex. Dr. Waldman's testimony, in my opinion, would have enhance the likelihood of Mr. Berry being found guilty.
9. Via cross-examination of the complainant I challenged the direct testimony of the complainant. In closing argument, I argued to the jury that sex with the complainant was consensual and she became upset in the morning while

engaging in voluntary sex with Mr. Berry realizing that he did not then use a condom and being upset she told Mr. Berry to leave her apartment.

10. I further brought out that Mr. Berry obeyed her command and dressed himself in front of her and left.
11. I also brought to the attention of the jury that the complainant never screamed or yelled out to notify her friend who had been sleeping on the living room futon, even while Mr. Berry was getting dressed.
12. In closing argument, I also argued that the complainant did not herself then call the police nor did she have her friend call the police.
13. I brought out that her concern was the fear of becoming pregnant or obtaining a sexually transmitted disease and that she rather than calling the police took a shower and had a cup of coffee before going to a walk-in clinic.
14. I brought to the attention of the jury that the walk-in clinic had her go to a hospital for treatment and that she went to work the next day before eventually going to the police station.
15. I argued that her motive to claim rape was for her to receive treatment to prevent the possibility of pregnancy or the possibility of catching a sexually transmitted disease.
16. I believe that I further suggested to the jury that the complainant alleging rape to the police was based on regret and saving face and her reputation as well as the fact that she had at the hospital already claimed that she had been raped.

Sworn to under the pains and penalties of perjury.

Respectfully submitted,



Elliot R. Levine  
20 Whitney Road  
Quincy, MA 02169  
(617) 472-2424  
BBO# 296580



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUFFOLK SUPERIOR COURT

CASE NO. SUCR 2015 - 10117

COMMONWEALTH

v.

WILLIAM BERRY

)  
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AFFIDAVIT OF ELLIOT LEVINE

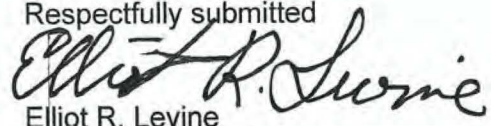
I, Elliot Levine do hereby depose and state:

1. I was trial counsel on this case.
2. The jury returned a verdict of guilty on all charges including aggravated rape.
3. Appellate counsel sent me a report submitted by Dr. Strange as well as the report of Dr. Waldman which I previously responded to via affidavit.
4. I have reviewed the report of Dr. Strange which deals with perception and memory.
5. I am very familiar with the literature and research involving perception and memory.
6. I have used expert witnesses in the area of perception and memory.
7. Had I thought an expert in this area would have aided the defense of William Berry I would have done so.
8. Nothing in the report of Dr. Strange causes me to rethink my defense of Mr. Berry.
9. Mindful of the art of cross-examination, it is my opinion that the case did not call for such an expert in that it would have negatively impacted the defense of Mr. Berry. It would have allowed the Commonwealth to highlight the drunken state of the complaining witness to the point that she could not have engaged in consensual to sex.

Sworn to under the pains and penalty of perjury.

10/12/2020

Respectfully submitted

A handwritten signature in black ink, appearing to read "Elliot R. Levine". The signature is fluid and cursive, with the first name "Elliot" being more prominent and the last name "Levine" following in a similar style.

Elliot R. Levine

20 Whitney Road

Quincy, MA 02169

617-472-2424 – office

617-669-2254 – cell phone

BBO # 296580

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUFFOLK SUPERIOR COURT

CASE NO. SUCR 1584CR10117

COMMONWEALTH )

v. )

AFFIDAVIT OF ELLIOT LEVINE

WILLIAM BERRY )

I Elliot Levine Esquire do hereby depose and state that:

1. I was the trial attorney for Mr. Berry in this case.
2. The trial in this case began on April 11, 2016.
3. The jury found Mr. Berry guilty of all the charges, including aggravated rape.
4. In preparing the case for trial I gave serious consideration to the pros and cons of having an expert on intoxication.
5. I made the strategic decision not to use an expert on intoxication.
6. I have examined the reports of Dr. Allan J. Waldman, MD and Dr. Wartenberg provided to me by appellate counsel, Michael A. Nam-Kane, apparently for the purpose of responding to the strategic decision I had made.
7. After carefully reviewing the reports of Dr. Waldman and Dr. Wartenberg I remain firm regarding the strategic decision that I made on behalf of Mr. Berry.
8. In my opinion had Dr. Waldman testified the prosecuting attorney would have effectively made him the prosecutions most compelling witness. The Assistant District Attorney via cross-examination of Dr. Waldman would have convinced the jury that Mr. Berry would have known or reasonably should have known that the complainant was so intoxicated that her condition rendered her incapable of consenting to sex. Dr. Waldman's testimony, in my opinion, would have enhance the likelihood of Mr. Berry being found guilty.
9. Dr. Wartenberg's report does not take into account how patently intoxicated the alleged victim was coming home with her friend and that the alleged victim entered her apartment with her friend and not with Mr. Berry. Testimony by Dr. Wartenberg would have had to overcome not only the testimony of the alleged victim but also testimony of the alleged victim's friend.

10. Via cross-examination of the complainant, I challenged the direct testimony of the complainant. In closing argument, I argued to the jury that sex with the complainant was consensual, and she became upset in the morning while engaging in voluntary sex with Mr. Berry realizing that he did not then use a condom and being upset she told Mr. Berry to leave her apartment.
11. I further brought out that Mr. Berry obeyed her command and dressed himself in front of her and left.
12. I also brought to the attention of the jury that the complainant never screamed to or yelled out to notify her friend who had been sleeping on the living room futon, even while Mr. Berry was getting dressed.
13. In closing argument, I also argued that the complainant did not herself then call the police nor did she have her friend call the police.
14. I brought out that her concern was the fear of becoming pregnant or obtaining a sexually transmitted disease and that she rather than calling the police took a shower and had a cup of coffee before going to a walk-in clinic.
15. I brought to the attention of the jury that the walk-in clinic had her go to a hospital for treatment and that she went to work the next day before eventually going to the police station.
16. I argued that her motive to claim rape was for her to receive treatment to prevent the possibility of pregnancy or the possibility of catching a sexually transmitted disease.
17. I believe that I further suggested to the jury that the complainant alleging rape to the police was based on regret and saving face and her reputation as well as the fact that she had at the hospital already claimed that she had been raped.

Sworn to under the pains and penalties of perjury.

2/4/2022

Respectfully submitted,



Elliot R. Levine  
20 Whitney Road  
Quincy, MA 02169  
(617) 472-2424  
BBO# 296580



## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
INDICTMENT NO. 1584CR10117

COMMONWEALTH

V.

WILLIAM E. BERRY

---

**MEMORANDUM AND ORDER DENYING MOTION FOR NEW TRIAL**

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Defendant William Berry ("Berry") was convicted and sentenced on April 19, 2016, of aggravated rape, burglary, and breaking and entering in the nighttime to commit a felony. On April 10, 2019, the Appeals Court stayed appellate proceedings in order for Berry to file a motion for a new trial. On March 18, 2021, Berry filed a motion for new trial, and the Commonwealth responded on July 21, 2021. Berry filed his last amended memorandum in support of his motion for new trial on February 28, 2022. On April 7, 2022, the Commonwealth filed its supplemental opposition to the defendant's motion for new trial. On August 10, 2022, the Court heard oral arguments. The parties filed their last supplemental briefs by September 19, 2022.

Since the trial judge (Gaziano, J.) sits on the Supreme Judicial Court, this motion for new trial is referred to a new judge. The Court concludes that, for the reasons discussed below, it must DENY Berry's motion for new trial.

## FACTUAL BACKGROUND

On August 24, 2014, twenty-four-year-old Alice<sup>1</sup> was living on the first-floor apartment in Allston with her roommates, Katelyn, and Hillary<sup>2</sup>. Alice's building was a three-story building with three separate apartments on each floor. The front door to the building was frequently popped open during August of 2014. In the month of August of 2014, Alice and her roommates had issues with their apartment door and had difficulty closing their apartment door completely.

On the evening of August 23, 2014, Alice's best friend, Caitlin (roommate is Katelyn, friend is Caitlin), came over to Alice's apartment to go out with their graduate school friends. Alice had a glass of wine and left the apartment with Caitlin around 9 P.M. They then went to another apartment in Mission Hill, where Alice had two very strong alcoholic smoothies. She and her friends left Mission Hill around 10 P.M. to go to a bar. Alice had four to five more drinks and became very drunk. At around 1:30 A.M., Alice and Caitlin left the bar and took a cab to Alice's apartment. Caitlin had to help Alice walk because Alice was very drunk and "barely functional." Alice was too drunk to remember where her apartment keys were, so she called her roommate Katelyn on her cellphone. They also buzzed the apartment several times. Only Katelyn was home as the other roommate Hillary was out of state. After several buzzing, Katelyn woke up and let them both inside the apartment. There was no one else on the street when they got into the apartment.

Before Katelyn went back to sleep, she observed that the front door of the apartment was closed and that the main entrance to the building was shut. However, Caitlin admitted to not

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<sup>1</sup> The Court uses the pseudonym for the victim, Alice, as used by the defendant.

<sup>2</sup> Only first names are used for other witnesses.

giving the apartment door an extra push to completely shut the door. Caitlin helped Alice to her bed and grabbed a bowl and placed it by Alice just in case she needed to vomit. Caitlin fell asleep on the futon in the living room at around 2:15 A.M. Alice was very intoxicated, and she did not remember how she got to her bed. Alice did not change her clothes, and still wore the dress and underwear that she wore to the bar.

Caitlin slept in the living room and did not hear any disturbing sounds that night. At around 7:00 A.M., Alice woke up in her bed to Berry who was “spooning” her from behind, with his penis inside her vagina. Alice was not wearing her underwear but was still wearing the same dress. She pushed Berry and told him to stop. He did not immediately stop until she pushed him away and told him to stop again. Alice did not recall whether he wore a condom or ejaculated. Alice jumped out of bed and told Berry to leave. Berry got dressed, grabbed his backpack, and left.

Caitlin woke up at the sound of Berry’s voice. Before he left the apartment, Caitlin believed that he spoke in an “annoyed” voice and called Alice by a different name saying, “Katelin” or “Kate.” Alice saw the defendant for few minutes but did not get a good look at his face. She saw that he was taller than her, with a mid-range weight, and around 25 to 35 years old. He had dark hair, with a full beard and a mustache. He was wearing khaki pants, blue shirt, with an orange and gray backpack.

When Berry left, Alice woke up Caitlin to see if Alice brought anyone into the house the night before. Alice told Caitlin that she thought she brought somebody home last night. Caitlin corrected Alice and told her that no one came home with Alice and that Caitlin had put her to bed alone. Neither Caitlin nor Katelyn recalled letting anyone in the apartment that night. Alice showered and went to a clinic to be treated for possible sexually transmitted disease and

pregnancy. The clinic then sent her to a hospital where she was examined by a Sexual Assault Nurse Examiner. The nurse collected vaginal swabs and documented her injuries, which included an abrasion and redness in her vaginal area.

The following day, Alice met with police officers. Although she could not recall the suspect's face, she described him as a white, non-Hispanic male; dark haired with full facial hair of beard and mustache; height estimating from 5 feet 8 inches to 6 feet tall; mid-range in weight; and between ages 25 to 35 years old. She also described his gray and orange backpack. The police checked all windows and doors of the apartment and the building and found no evidence of forced entry.

The swab from Alice's examination was submitted for DNA testing. About seven months after the incident, in November of 2014, sperms cells from the vaginal swab of Alice were matched to the forty-year-old defendant. On December 4, 2014, the police arrested Berry on a warrant for rape of Alice. During the interview, Berry told the police that he had not been in Allston for a long time, and not during the night in question. He denied committing any breaking and entering and denied cheating on his fiancé with anyone. When shown a photograph of Alice, he stated that he had never seen her. After the police told him that his DNA was found inside her, he continued to deny knowing Alice.

At trial, Berry testified. He stated that he had consensual sex with Alice. He described how he and Alice first met outside a bar in Allston about a month before the incident. During the night they first met, he saw a man bugging Alice and he offered to get her a cab. He stated that he ended up walking her home. She had to put her arm around him to walk, as she was intoxicated. As they began talking, she told him that he could text her. He told her that his cell phone was not working. She stated to Berry that he could knock on her window if the light was



on so that they could be physically intimate with one another. They were not intimate that first night he met her.

Berry testified that on the evening of August 24, 2014, he saw that the light in her bedroom was on as he walked down her street. When he knocked on the window, Alice saw that it was him, and she came outside to hang out on the porch with him. They talked on the porch and started to kiss. She retrieved her apartment key from her bra and they went inside her bedroom. Berry stated that they had sex three times, only once with a condom. In the morning, they had sex again, according to Berry. Alice asked him if he was using a condom, and when he stated no, Alice got upset and told him to leave.

When they were together on the evening of August 24, 2014, Berry stated that Alice was no more drunk than the first time he had met her a month prior. He first denied knowing Alice to the police because he did not want his girlfriend to find out about what had happened. He admitted to making up lies and denying the accusation of the DNA match to get out of trouble with the police.

Defense counsel argued that Berry and Alice had consensual sex, consistent with their previous arrangement. The defense's theory was that after realizing that they had unprotected sex, Alice made up lies to her roommate so that she could receive a morning-after pill and protection from possible sexually transmitted disease. Lastly, defense counsel argued that Alice was not "knocked out unconscious from alcohol" and that she was aware of what had happened in having unprotected consensual sex. He also argued that there was no evidence of forced entry.

The Commonwealth's theory was that Alice was incapable of consenting to sex with Berry. During jury charge conference, defense counsel objected to the judge giving supplemental jury instruction on incapacitation and intoxication, arguing that there was not

sufficient evidence that Alice was intoxicated at the time of sex and that her level of intoxication did not rise to that level for the instruction. The judge overruled the defendant's objection and instructed the jury with the supplemental instruction.

## **DISCUSSION**

### **Standard of Review**

Mass. R. Crim. P. 30(b) provides that "[t]he trial judge upon a motion in writing may grant a new trial at any time if it appears that justice may not have been done." See Commonwealth v. Buck, 64 Mass. App. Ct. 760, 766 (2005). However, "[a] strong policy of finality limits the grant of new trial motions to exceptional situations, and such motions should not be allowed lightly." Commonwealth v. Ubeira-Gonzalez, 87 Mass. App. Ct. 37, 39-40 (2015) (citation and quotation omitted). For this reason, "[j]udges are to apply the standard set forth in rule 30(b) rigorously and should only grant such a motion if the defendant comes forward with a credible reason which outweighs the risk of prejudice to the Commonwealth." Commonwealth v. Wheeler, 52 Mass. App. Ct. 631, 635-36 (2001); see also Commonwealth v. Marinho, 466 Mass. 115, 123 (2013) ("A defendant bears the burden of proof on a motion for new trial ....").

### **Evidentiary Hearing**

A motion judge "has flexibility to choose the procedure by which to consider" a new trial motion. Commonwealth v. Grace, 397 Mass. 303, 313 (1986); Commonwealth v. Laguer, 89 Mass. App. Ct. 32, 40 (2016) (same). "In adjudicating a motion for a new trial, the 'judge may rule on the issue or issues presented by such motion on the basis of the facts alleged in the affidavits without further hearing, if no substantial issue is raised by the motion or affidavits.'" Commonwealth v. Drayton, 473 Mass. 23, 31 (2015), quoting Mass. R. Crim. P. 30(c); see also

Reporter's Notes to Mass. R. Crim. P. 30(c) ("The primary purpose of subdivision (c)(3) is to encourage the disposition of post-conviction motions upon affidavit."). "The decision to hold an evidentiary hearing on a motion for a new trial is 'left largely to the sound discretion of the judge[,]'" Commonwealth v. Vaughn, 471 Mass. 398, 404 (2015), and "expenditure of limited public resources is reserved only for a case that truly warrants revisitation of a final judgment in the interests of justice." Commonwealth v. Lopez, 426 Mass. 657, 663 (1998). "'When a substantial issue has been raised, and supported by a substantial evidentiary showing,' however, 'the judge should hold an evidentiary hearing.'" Drayton, 473 Mass. at 31 (citation omitted).

"In determining whether a 'substantial issue' meriting an evidentiary hearing . . . has been raised, [courts] look not only at the seriousness of the issue asserted, but also to the adequacy of the defendant's showing on the issue raised.'" Vaughn, 471 Mass. at 404 (ellipses in original) (citation omitted). "In determining the adequacy of the defendant's showing, the motion judge may consider whether the motion and affidavits contain credible information of sufficient quality to raise a serious question." Id. In essence, the judge is called upon to assess the credibility of the defendant's claims. Id. See also Drayton, 473 Mass. at 24, 36 (holding that defendant "raise[d] a substantial issue, warranting an evidentiary hearing," where newly discovered affidavit "would have been critical to the defense" because it "directly contradict[ed]" witness whose testimony constituted the "bulk of the evidence at trial against the defendant[,] and without that witness's testimony "there [was] no evidence that [made] it more likely than not . . . that the defendant . . . was the perpetrator").

After a careful review, this Court does not find that an evidentiary hearing in the present case is unnecessary. The Court has reviewed Berry's memorandum of law, his affidavits and other exhibits attached to it, the Commonwealth's memorandum in opposition, and the complete

trial transcript. The Court also heard oral arguments from both sides. The Court exercises its discretion to decide Berry's motion without conducting an evidentiary hearing. It does so because the motion raises no substantial issue that requires further fact finding and Berry has not shown that an evidentiary hearing would "add anything [material] to the information that has been presented in the motion and affidavits." Commonwealth v. Goodreau, 442 Mass. 341, 348-349 (2004); accord Mass. R. Crim. P. 30(c). No evidentiary hearing is warranted because the facts that Berry relies upon are undisputed. See Commonwealth v. Buckman, 461 Mass. 24, 44 (2011) (affirming denial of evidentiary hearing on this ground); accord Commonwealth v. Ortiz, 67 Mass. app. Ct. 349, 361, rev. denied, 447 Mass. 1112 (2006) ("If the theory of the motion, as presented by the papers, is not credible or not persuasive, holding an evidentiary hearing to have the witnesses repeat the same evidence... will accomplish nothing[.]" quoting Goodreau, 442 Mass. at 348-349). The Court accepts the reports of Dr. Wartenberg and Dr. Strange. Had they testified to their opinion based on their reports, within the confines of admissible expert testimony, Berry still does not meet his burden for a new trial.

Dr. Wartenberg who is an internal medicine physician who also practiced addiction medicine, would testify that there are instances where an individual could be in the "midst of alcohol-related amnesic period," colloquially known as a "black out." Dr. Wartenberg would not be permitted to directly opine on Alice's state. But he could generally testify that an individual in an alcoholic amnesic episode with such high alcohol level could have no memory of his or her events or behaviors. Dr. Wartenberg would opine that such memories could return in pieces or never return at all. He would also opine that despite such intoxication in not recalling the events, certain individuals may appear totally conscious and can function normally to outside observers.

Dr. Strange who is a professor of psychology in the field of memory, psychology, and law, would testify in general as to how human memory is a reconstructive process. She will generally educate the jurors that some human memory can be distorted or affected by other suggestive influences, rather than the accuracy of the recollection of one's own memory. She will explain different factors in "suggestive influences" which could result in distorted or false memories. Dr. Strange would not directly opine that Alice's recollection was an example of distorted and false memory. Understanding both experts' opinions, which could have been elicited had they testified on trial, no further evidentiary trial is necessary.

### **Claims Involving Matters of Law for Direct Appeal**

There are several arguments Berry makes on his motion for new trial which this Court declines to address as these questions do not require any fact-finding by this Court. The following issues should be addressed and resolved at Berry's direct appeal, to which Berry did not object during oral arguments. The listed arguments are not addressed in this Court's motion for new trial: 1) The Commonwealth failed to prove that any break-in occurred at night; 2) The Commonwealth's opening and closing arguments improperly stated facts not in evidence and made crass pleas to the jury's emotions; 3) The convictions for aggravated burglary and breaking and entering are both duplicative and should be vacated; and 5) Berry should have been allowed to stipulate to the DNA evidence.

The Appeals Court is the only court that can ultimately determine whether there was sufficient evidence, whether there was prosecutorial or judicial error, and whether the convictions were legally duplicative. Where I was not the trial judge, the Appeals Court is in a better position to resolve these claims with finality. See Commonwealth v. Hernandez, 481 Mass. 189, 195 (2019), citing Commonwealth v. Grace, 397 Mass. 303, 307 (1986) (appellate

court regarding themselves in as good a position as the motion judge to assess the trial record where there was no evidentiary hearing).

### **Ineffective Assistance of Counsel**

The standards which govern a claim of ineffective assistance of counsel are well established. “A defendant is denied his constitutional right to effective assistance of counsel where the conduct of his attorney falls ‘measurably below that which might be expected of an ordinary fallible lawyer,’ and thereby ‘likely deprived the defendant of an otherwise available, substantial ground of defense.’” Commonwealth v. Glover, 459 Mass. 836, 842 (2011) (quoting Commonwealth v. Sefarian, 366 Mass. 89, 96 (1974)). Accord Commonwealth v. Millen, 474 Mass. 417, 429-30 (2016) (same). “The burden lies with the defendant, ... and with respect to the second prong of the Sefarian test, the defendant must show that ‘better work might have accomplished something material for the defense.’” Commonwealth v. Phinney, 446 Mass. 155, 162 (2006) (quoting Commonwealth v. Satterfield, 373 Mass. 109, 115 (1977) (citations omitted)).

“Where defense counsel made a strategic or tactical decision that the defendant now challenges,” the Court must determine “whether the decision was ‘manifestly unreasonable’ when made, recognizing that ‘[m]any decisions of defense counsel that are characterized in hindsight as errors may have been reasonable tactical or strategic decisions when made.’” Commonwealth v. Walker, 460 Mass. 590, 598-99 (2011) (quoting Commonwealth v. Mosher, 455 Mass. 811, 827 (2010)) (alteration in original). “Only ‘strategy and tactics which lawyers of ordinary training and skill in the criminal law would not consider competent’ are manifestly unreasonable.” Commonwealth v. Pillai, 445 Mass. 175, 186-87 (2005) (quoting Commonwealth v. Levia, 385 Mass. 345, 353 (1982)).

7

To prevail on a motion for new trial based upon a claim of ineffective assistance of counsel, a defendant bears the burden of demonstrating that the conduct of his trial lawyer reflected “serious incompetency, inefficiency, or inattention,” Commonwealth v. Phinney, 446 Mass. 155, 162 (2006) (quotation omitted), and that such inadequacy “likely deprived the defendant of an otherwise available, substantial ground of defense.” Commonwealth v. Comita, 441 Mass. 86, 93 (2004). In the case at bar, Berry has manifestly failed to carry this heavy burden.

The defense trial strategy was that Berry and Alice had consensual sex, consistent with their previous arrangement. Although Alice was under the influence of alcohol, she was no more drunk than when he had first met her when she invited him to knock on the window at any hour of the day to have sex. Through Berry’s testimony and the trial counsel’s cross examination of Commonwealth’s witnesses, the defense theory was that Alice only got upset when she realized that they had unprotected sex. Alice did not push or scream Berry away. Her main concern was to go to a clinic to be treated. Because there was no sign of breaking into the apartment, Alice must have invited Berry inside the apartment per their previous agreement.

Now for his motion for new trial, Berry claims ineffective assistance of counsel in not pursuing a different defense theory. He claims that in not pursuing experts like Dr. Wartenberg and Dr. Strange, the trial counsel failed to pursue a better defense strategy. This better defense strategy would not have to convince the jury that Alice was an outright liar. The alternative theory would have given the option for the jurors to acquit Berry without having to reconcile that Alice was a liar. In essence, Dr. Wartenberg could have testified that one could be drunk enough to not recall anything from that drunken state but could appear not drunk at all to others. Therefore, Berry could believe that Alice was not too incapacitated to consent to sex.



Dr. Strange would testify to factors which lead to suggestibility of one's memory. This alternate theory in presenting two experts suggests that Alice is not lying to the jury, but that she honestly cannot recall consenting to having sex with Berry. Under this alternate theory, jurors could believe that Alice now testified that she was raped due to her honest mistake of not remembering and due to the suggestable factors surrounding her disclosure.

Even if Dr. Wartenberg and Dr. Strange were able to testify on trial and even if Berry were able to present this second theory for his defense, this alternate theory is not the only nor the most obvious theory for his defense. The trial counsel stated in his affidavit that he thought about consulting with experts on memory or intoxication but chose a different theory. The trial counsel thought through the possible cross examination of the experts and made a tactical decision to go with the trial defense theory, where Berry testified and verified to support that defense. The trial counsel's trial strategy was not "manifestly unreasonable when made," and involves "some deference to avoid characterizing as unreasonable a defense that was merely unsuccessful." Kolenovic at 673-674. This inquiry is not done with the benefit of hindsight and "requires a focus on the point in time when counsel made the challenged strategic decision." Id. 674, citing Glover at 843 (2011).

This alternate theory of defense (where Alice was so drunk as not to recall consensual sex but did not appear so drunk to Berry for her to consent) is not the only substantial available defense. Contrast to Commonwealth v. Wright, 411 Mass. 678, 682 (1992) and contrast to Commonwealth v. Roberio, 428 Mass. 278 (1998) (where failure to investigate an insanity defense falls below the level of competence demanded of attorneys, if facts known to, or accessible to, trial counsel raised a reasonable doubt as to the defendant's mental condition).



Berry's second defense is not the only nor the most logical "substantial defense." In hindsight, Berry now alleges that the trial strategy was unsuccessful and thus the trial counsel must have explored other defense strategies. "An unsuccessful defense strategy does not amount to ineffective assistance of counsel, even if different strategies were available or conceivable." Commonwealth v. Eric Denson, 489 Mass. 138, 152, 180 N.E.3d 437 (2022), see Commonwealth v. White, 409 Mass. 266, 272 (1991) ("where tactical or strategic decisions of the defendant's counsel are at issue, we... avoid characterizing as unreasonable a defense that was merely unsuccessful"), and Commonwealth v. Moore, 489 Mass. 735, 187 N.E. 3d 986 (2022). Only "strategy and tactics which lawyers of ordinary training and skill in the criminal law would not consider competent" are manifestly unreasonable. Pillai at 186-187 (2005). "The manifestly unreasonable test, therefore, is essentially a search for rationality in counsel's strategic decisions, taking into account all the circumstances known or that should have been known to counsel in the exercise of his duty to provide effective representation to the client and not whether counsel could have made alternative choices." Kolenovic, at 674-675. The defendant's ineffective assistance claim therefore fails on this basis. The trial counsel's over-all strategy was not manifestly unreasonable where the now-alternative choice was not the only substantial defense. The fact that the trial counsel did not pursue additional avenues of attacking the credibility of Alice's testimony does not constitute ineffective assistance of counsel. See Commonwealth v. Fisher, 433 Mass. 340, 357 (2001) ("Absent counsel's failure to pursue some obviously powerful form of impeachment available at trial, it is speculative to conclude that a different approach to impeachment would likely have affected the jury's conclusion"). Especially where Alice was subjected to extensive cross examination challenging the validity and credibility of her testimony, the trial counsel was not ineffective.

The higher courts have certainly deemed trial counsel ineffective for not calling an expert to bolster the defense theory. However, in those cases, that defense theory was a substantial defense which was not pursued. *If* under the same substantial defense theory, the trial counsel failed to consult with an expert, she would be ineffective. See Commonwealth v. Epps, 474 Mass. 743 (2016). In Epps, there was one and only available defense that the defendant did not “shake” the baby and that there were other reasons for the injuries. The trial counsel conferred with one expert who was not helpful to defendant. Then the trial counsel did not consult with a known second expert, when there was substantial scientific and medical literature that recognized the possibility that accidental short falls can cause serious head injuries in young children, rather than a “shaken baby” syndrome opinion. In Epps, the trial counsel failed to bring forward an expert to support their only defense. Not choosing to call an expert because the trial counsel believed that his second expert who questioned the validity of shaken baby syndrome would be subjected to attack by their peers and be more vulnerable to cross-examination by the Commonwealth, were not sufficient reasons where an accidental fall was the only defense to the child’s injuries. “[W]here a strategic decision is made to conduct something less than a complete investigation of a potentially substantial defense, either because defense counsel decided to forget that defense or to present it at trial without complete investigation, [the court] ask whether it was manifestly unreasonable to conduct so limited an investigation. Comm v. LaBrie, 473 Mass. 754, 771, quoting, Commonwealth v. Lang, 473 Mass. 1, 14 (2015).

Defense counsel has a professional obligation to investigate all potentially substantial defenses. The extent of investigation required to explore each potential defense depends on the strength of that defense relation to the availability and strength of other potential defenses. See Koelnovi at 676 (“choices between a [lack of criminal responsibility] defense that ...would

require riding ‘two horses,’ and a viable alternative defense based on the factually unassailable intoxication defense developed by counsel’ justified lack of investigation into lack of criminal responsibility defense); Contrast to Commonwealth v. Haggerty, 400 Mass. 437, 442 (1987) (“[f]ailure to investigate the *only* defense a defendant has, if facts known to or with minimal diligence accessible to counsel support that defense, falls beneath the level of competency expected”). See also Commonwealth v. Lang, 473 Mass. 1, 14 (2015) and Commonwealth v. Baker, 440 Mass. 519, 529 (2003) (emphasis added).

In Commonwealth v. Lane, 462 Mass. 591 (2012), trial counsel tactically decided not to put up a witness who put in dispute the entire theory of the Commonwealth’s case that the defendant was the shooter. And such decision was manifestly unreasonable and deprived the defendant of an otherwise available defense.” The witness was so vital to the case that trial counsel’s decision not to call the witness because of “trivial inconsistencies” was manifestly unreasonable and ultimately prejudicial. The failure to call this key witness was the counsel’s failure to dispel the Commonwealth’s case. In Berry’s case however, failure to call Dr. Wartenberg and Dr. Strange was not so vital to refute the Commonwealth’s case. This alternate theory is not the only, nor the most logical, nor a substantial defense.

Evidence that a person’s (defendant or alleged victim) mind may have been impaired at the time of the crime by intoxication “almost always includes expert testimony” that relates to the issues of intent and the ability to premeditate. Commonwealth v. Cruz, 413 Mass. 686, 690-691 (1992). The trial counsel’s decision to not bring forward an expert to opine about Alice’s impairment is not “a per se case of ineffective representation.” Commonwealth v. Frank, 433 Mass. 185, 192, 740 N.E.2d 629 (2001). The critical inquiry is whether counsel’s choice was an informed and reasonable decision, a consideration to be assessed in light of his over-all

representation of the defendant at the trial. If so, the decision was not error, and therefore, by definition, not a matter “likely to have unfairly influenced the jury’s verdict.” Commonwealth v. Plant, 417 Mss. 704, 715 (1994). As stated in his affidavit, the trial counsel “gave serious consideration to the pros and cons of having an expert on intoxication... and [was] very familiar with the literature and research involving perception and memory... [but] made the strategic decision not to use an expert.” “The deference we give to defense counsel’s strategic judgment in determining whether it was manifestly unreasonable reflects the strong presumption that counsel knows best how to defend a client.” Glover at 843. Although the trial counsel’s theory of the case was ultimately unsuccessful, it was not manifestly unreasonable when viewed in light of all the evidence available at the time. See Commonwealth v. Walker, 460 Mass. 590, 598-99 (2011). Trial counsel made an informed and reasonable decision and went forward with Berry’s testimony to support their substantial defense.

### ORDER

For all the foregoing reasons, William Berry’s Motion for New Trial is **DENIED**.

DATE: 10/5/2022

Ham, J.  
Catherine H. Ham  
Justice of the Superior Court