



# LEGAL UPDATE

## ALL WITNESS RECANTATIONS MUST BE TURNED OVER TO THE DEFENSE

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*Commonwealth v. Gaines*, Supreme Judicial Court (August 29, 2024).

### RELEVANT FACTS

The victim was shot to death in December 1974. The defendant and two other individuals were charged with the murder. In the years since his conviction, the defendant filed multiple motions for new trial. His fourth motion was allowed in November 2022. The Commonwealth appealed. There were several issues raised in the case, most of which are more applicable to prosecutors. This summary focuses on a recantation that was made by one of the trial witnesses.

The witness originally placed the defendant and his co-defendants at the witness's apartment shortly after the shooting. In 1990 one of the co-defendants filed a motion for new trial and attached an affidavit signed by the witness recanting his statement, saying that none of the defendants were in his apartment that day. This same witness then changed his story in an affidavit signed in 1991 now claiming the defendant and one co-defendant, not the one requesting a new trial, had been in the apartment the day of the shooting. The witness then testified at a hearing on the co-defendant's motion for new trial and claimed for the first time that the defendant was armed when he arrived at the apartment. The hearing judge found the witness was drunk at the time of his testimony and that his testimony was not credible.

### DISCUSSION

The court found that the rules of professional conduct required the Commonwealth to disclose the 1990 affidavit to the defendant.

**For specific guidance on the application of this case or any law, please consult your supervisor or your department's legal advisor.**

Massachusetts Rules of Professional Conduct for attorneys contains a specific rule related to Special Responsibilities of a prosecutor, Rule 3.8. Rule 3.8(d) states that a prosecutor in a criminal case shall:

make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

The court noted that there was no time period specified in the rule, meaning that the obligation does not end after trial.

“Consistent with prosecutors’ broader disclosure obligations, we interpret Rule 3.8(d) to require the disclosure of any witness recantation known to the Commonwealth to defendants and, where applicable, their counsel and any codefendants.” (internal citations omitted.)

“Going forward, we read rule 3.8(d) to require the disclosure of any witness recantation known to the Commonwealth – regardless of its credibility or timeliness – to all defendants and, where applicable, their codefendants.”